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God, Country, and the Bomb

The strategic implications of Islamic ethical and legal-nuclear discourses

Tabatabai Nejad, Ariane

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God, Country, and the Bomb

The strategic implications of Islamic ethical and legal-nuclear discourses

Ariane M. Tabatabai

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Abstract

The controversial Iranian nuclear dossier, the Pakistani nuclear weapons programme, and the challenge posed to nuclear security by non-state terrorist organisations, such as Al-Qaeda, acquiring nuclear weapons, all raise concerns for international peace and security. The use of Islamic legal, ethical and strategic discourses about nuclear weaponry to justify their respective leaderships' positions is a common factor. While Iran presents *shari'a* law as a limiting factor, prohibiting nuclear weapons, Al-Qaeda has long justified its pursuit of a nuclear capability through the Islamic faith. Pakistan has given less attention to discussion of law, but became the first, and to date only, Muslim state to develop a nuclear arsenal, seeking to legitimise and secure funding for the development of its nuclear capability by characterising it as a Muslim endeavour. The strategic, political, and policy implications of the Islamic nuclear discourses of these three actors, including their impact on the non-proliferation regime, regional stability, and national and international security are vital issues. Islam has served as a vehicle to promote national and regime interests but can also have other implications and costs. Once an actor defines its nuclear programme or ambitions in Islamic terms, it can only reverse its position at great political cost.

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Abbreviations

AEOI	Atomic Energy Organisation of Iran
AFpak	Afghanistan and Pakistan
AP	Additional Protocol
AP 1	Additional Protocol 1 (Geneva Conventions)
AQ	Al-Qaeda/Abdul Qadeer (Khan)
AQAP	Al-Qaeda in the Arabian Peninsula
AQIS	Al-Qaeda in the Indian Subcontinent
BW	Biological Weapons
BWC	Biological Weapons Convention
BTWC	Biological and Toxic Weapons Convention
C2	Command and control
CBM	Confidence Building Measures
CBRN	Chemical, biological, radioactive, and nuclear weapons
CD	Conference on Disarmament
CPPNM	Convention on the Physical Protection of Nuclear Material
CSBM	Confidence and Security-Building Measures
CT	Counter-terrorism
CTBT	Comprehensive Nuclear Test Ban Treaty
CTBTO	Comprehensive Nuclear Test Ban Treaty Organisation
CW	Chemical Weapons
CWC	Chemical Weapons Convention
DPRK	Democratic People's Republic of Korea
EU3+3	See P5+1
FEP	Fuel Enrichment Plant
FMCT	Fissile Material Cut-Off Treaty
GC	Geneva Conventions
GCC	Gulf Cooperation Council
GTR(I)	Global Threat Reduction Initiative
HAMAS	Harakat al Muqawwama at-Islami (Islamic Resistance Movement)
HEU	Highly Enriched Uranium
HQN	The Haqqani Network
HWR	Heavy Water Reactor
IAEA	International Atomic Energy Agency

ICBM	Intercontinental Ballistic Missile
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for Yugoslavia
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ILC	International Law Commission
IMS	International Monitoring System
IND	Improvised Nuclear Device
INVAP	Applied Research Institute (Argentina)
IR	Islamic Republic
IRA	Irish Republican Army
IRGC	Islamic Revolutionary Guard Corps
IRNA	Islamic Republic News Agency
ISI	Inter-Services Intelligence
ISIS	Islamic State in Iraq and Syria
JHL	Jabr Ibn Hayan Multipurpose Laboratories
KSA	Kingdom of Saudi Arabia
KRL	Khan Research Laboratories
LeJ	Lashkar-e Jhangvi
LeT	Lashkar-e Taiba
LEU	Low Enriched Uranium
LOIAC	Laws of International Armed Conflict
MAK	Maktab al-Khidamāt
MENA	Middle East and North Africa
MEK	Mojahedin-e Khaq
MEWMDFZ	Middle East Weapons of Mass Destruction Free-Zone
MRBM	Medium-Range Ballistic Missile
MW	Mega Watt
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NAT	Nuclear Annihilation Threat Index
NFU	No first use
NIF	National Islamic Front

NMI	Nuclear Materials Security Index
NNWS	Non-Nuclear Weapon State
NPR	Nuclear Posture Review
NPT	Nuclear Non-Proliferation Treaty
NSS	Nuclear Security Summit
NTI	Nuclear Threat Initiative
NWC	Nuclear Weapons Convention
NWS	Nuclear Weapon State
NWFZ	Nuclear Weapon Free-Zone
P5	UN Security Council Permanent Five members
P5+1	Permanent Five members of the UNSC + Germany
PAEC	Pakistan Atomic Energy Commission
PFEP	Pilot Fuel Enrichment Plant
PLO	Palestinian Liberation Organisation
PMD	Possible Military Dimensions
PPP	Pakistan Peoples Party
PrepCom	The NPT Preparatory Commission
PTBT	Partial Test Ban Treaty
Pu	Plutonium
R&D	Research and Development
RDD	Radiological Dispersion Device (dirty bomb)
RED	Radiation Emission Device
RevCon	The NPT Review Conference
OBL	Osama bin Laden (also UBL – Ussama bin Laden)
QF	Quds Force
SAVAK	Sazeman-e Ettelaat va Amniat-e Keshvar (Organisation of Intelligence and National Security)
SL	Supreme Leader
TRR	Tehran Research Reactor
UAE	United Arab Emirates
UAV	Unmanned aerial vehicle
UCF	Uranium Conversion Facility
UCN	Ultra-Centrifuge Nederland
UF6	Uranium Hexafluoride
UKNI	UK-Norway Initiative

UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USSR	Union of Soviet Socialist Republics
VVER	Voda Voda Energo Reactor
WHO	World Health Organisation
WMD	Weapons of Mass Destruction
WMDFZ	Weapons of Mass Destruction Free-Zone

Chapter One: Introduction

The Middle East and South Asia remain volatile and give rise to a number of challenges to international peace and security. These include the overwhelming number of non-democratic, fragile, and failed states, terrorism, and the proliferation and use of weapons of mass destruction (WMD), in both international and civil armed conflicts. These challenges coexist and often overlap, leading to their reinforcement. For instance, the presence of the terrorist network Al-Qaeda (AQ) and its affiliates in South Asia and, increasingly, the Middle East, the fragility of many governments, and the existence of the world's fastest-growing nuclear weapons arsenal in Pakistan raise concerns regarding nuclear terrorism. Likewise, the proliferation of WMD has proved to be particularly worrisome in the Middle East. Indeed, the past three decades have seen the use of chemical weapons especially in the region on three separate occasions. These are: the Egyptian use of these weapons in Yemen in the 1960s, their use by Iraq against both Iran and its own citizens in the 1980s, and their use more recently in the context of the Syrian civil war. Hence, the proliferation of other WMD, including nuclear weapons, in the region is particularly concerning. In this context, the Iranian nuclear dossier, the creation of a Weapons of Mass Destruction-Free Zone (WMDFZ) in the Middle East, nuclear security and the prospect of nuclear terrorism, have gained a lot of attention since the end of the Cold War.

The growing institutionalisation of the Muslim faith and Islamisation across and beyond¹ the Middle East and North Africa (MENA) and South Asia regions, as well as the general return of religion in the public and political spheres across the globe,² have also created new challenges. Islamisation has led a number of actors to rely on the faith to justify their stances and actions on key issues in domestic politics and international affairs, to legitimise them and seek support. Hence, three main challenges to nuclear non-proliferation, arms control, and disarmament -- Al-Qaeda, Pakistan, and Iran --

¹ Muslim communities in Western Europe and North America have demanded for issues relating to personal status and family right, 'which enjoy constitutional status in a liberal democracy', to be under the jurisdiction of Islamic law. These communities argue that they are merely claiming what they view as their 'cultural and religious rights', while others view them as 'concessions' rather rights. 'The accommodation Islam is a prominent example of "judicialized politics".'

Joppe, Christian, and Torpey, John (2013), *Legal Integration of Islam – A Transatlantic Comparison*. Cambridge, M.A.: Harvard University Press. P. 7/9

² Hawkin, David (2004), *The Twenty-First Century Confronts Its Gods – Globalization, Technology, and War*. Albany, NY: State University of New York Press. P. 3

have developed very sophisticated Islamic discourses, shaping their nuclear and broader narratives. These discourses are often shaped around a pan-Islamic ideology, albeit to varying degrees.³

This thesis examines the strategic implications of the Islamic faith shaping nuclear narratives, politics, and policies. It answers the following question: What are the strategic implications of Islamic legal and ethical discourses on nuclear weapons? It concludes that while the Islamic legal discussion around nuclear weapons in itself does not have a clear strategic implication, its use as part of a nuclear narrative certainly does. Indeed, the religious discourse has served to legitimise and fund nuclear programmes, and recruit scientists and engineers to work on them. The following chapters demonstrate that the Islamic legal stance taken by an actor reflects its ambitions. The thesis argues that by defining its nuclear ambitions in Islamic terms, an actor can only reverse its position at a great political cost. Before discussing the content of each chapter, it is important to note that this thesis does not seek to offer a conclusion to the controversies on the Islamic position on violence.

The thesis has two main components. First, two legal chapters provide an overview of the international and Islamic legal frameworks, how they govern nuclear weapons, and where each case studied in this thesis falls in terms of international obligations and Islamic thinking. Together, these two chapters speak to the similarity of international and Islamic legal thinking on nuclear weapons. Indeed, despite their different methodological approaches and sources, the rulings on the legality of the production, possession, threat, and use of nuclear weapons stem from similar principles in both systems. Secondly, three case studies examine the key state and non-state actors who have developed an Islamic discourse justifying their nuclear ambitions. These three cases are Al-Qaeda, Pakistan, and Iran. The first two are similar in that they have each used Islamic law as an enabler, while Iran has used it as a limiting factor. All three cases, however, show that the discourse has served as a vehicle to pursue practical interests. In the cases of Al-Qaeda and Pakistan, these interests were legitimising,

³ 'Pan-Islam is an ideology calling for the unity of Muslim peoples worldwide on the basis of their shared Islamic identity'. This shared religious identity is presented by pan-Islamic ideologists as a common denominator, generating common interests. 'Apart from this basic definition, pan-Islam, historically and today, is characterized by great diversity of motives, goals and tactics. It ranges from what we could call solidarist visions at one end of the spectrum to pluralist visions at the other.' Sohail Buzan, Barry. Gonzalez-Pelaez, Ana (2009), *International Society and the Middle East – English School Theory at the Regional Level*. Hampshire: Palgrave Macmillan. P. 170

funding, and recruiting scientists and engineers to develop a nuclear weapons programme. In the case of Iran, this practical consideration was to legitimise and highlight the peaceful nature of the country's controversial nuclear programme in the face of evidence that Tehran had failed to comply by its international obligations.

To this end, the first chapter examines the extant international legal framework governing nuclear weapons. The second chapter juxtaposes the findings of the first chapter on international law with Islamic law. The chapter seeks to provide an overview of Islamic legal methodology and sources, which can be confusing and contradictory. Different schools of thought, and even authorities within a given one, have opposing views on many matters. Together, these two chapters provide the reader with the tools to comprehend the case studies. They provide an in-depth look into Islamic law by offering a point of comparison with international law. Building on this discussion, the following chapters assess the stance of three non-state and state actors on the matter. These actors are relevant players in discussions relating to regional and international security and, more specifically, arms control, non-proliferation, and disarmament. They have concrete nuclear ambitions and have sought to justify them according to the Muslim faith.

Many scholars and experts describe nuclear terrorism as 'a high-consequence, low-probability problem.'⁴ The case of Al-Qaeda is particularly interesting because it has been argued that therein could lay 'a rather primitive prototype of the terrorism to come.'⁵ Furthermore, the international community lacks control over such non-state actors. Pakistan is a *de facto* nuclear-armed state, which has developed its arsenal in the context of an arms race with neighbouring India and outside the framework of the Nuclear Non-Proliferation Treaty (NPT). It remains a fragile state, a terrorist safe haven, and, some argue, possesses the least secure nuclear arsenal of all nuclear-armed states as well as the fastest growing one. For its part, Iran, a Non-Nuclear Weapon State (NNWS) under the NPT with the obligation to reject a nuclear weapon capability, is actively pursuing a civilian nuclear programme (allowed under Article IV of the treaty) but has been widely suspected of harbouring weapons ambitions, pursuing a hedging policy. The programme's possible military dimensions (PMD) remain controversial.

⁴ Masse, Todd (2011), *Nuclear Jihad – A Clear and Present Danger?* Washington D.C.: Potomac Books. P. XIV

⁵ Bobbitt, Philip (2008), *Terror and Consent: The Wars For the Twenty-First Century*. London: Penguin Books. P. 63

This has led the United Nations Security Council (UNSC) to impose several rounds of sanctions to date for Tehran's refusal to suspend sensitive activities primarily related to enrichment. Enrichment is the frontend of the nuclear fuel cycle, and along with the backend, reprocessing, constitutes one of two paths to nuclear weapons. The former facilitates the development of highly enriched uranium-based nuclear weapons, while the latter facilitates the development of plutonium bombs.

The common denominator in all three cases is the attempts by their respective leaders to justify their actions as compatible with the prescriptions of the Islamic faith or the Will of God. Over the past decade a number of authorities, political and religious, have made declarations regarding the topic. Some have stated that nuclear weapons are 'prohibited' in Islam,⁶ while others assert that the pursuit of such weapons is allowed under Islamic law, and even a religious duty.⁷ However, the Islamic discourse surrounding nuclear weapons and its strategic implications have remained largely understudied in the academic literature.

Literature review

The scholarly literature discussing the Islamic discourse around nuclear weapons is extremely limited. This is due to the complex, multi-layered, and interdisciplinary nature of the enterprise. In Rolf Mowatt-Larssen's words, 'there is a lack of basic research on the issues that sit at the crossroads of nuclear proliferation, terrorism and religion. Perhaps this is due to the fact there are many experts in each of these domains, but very few experts in all three.'⁸ Mowatt-Larssen's work on the status of nuclear weapons under Islamic law remains one of the few comprehensive attempts to assess the topic. However, perhaps due to the very challenges he identifies, the author himself falls short in offering a complete image of the legal status of nuclear weapons under Islamic law. He presents two of the sources of Islamic law: the *Qur'an* and *fatāwā*. This approach is problematic as the *Qur'an*, while the cornerstone of Islamic law, does not constitute its only source and *fatāwā*, while having gained a lot of attention in the

⁶ Collier, Robert. 'Nuclear weapons unholy, Iran Says / Islam forbids use, clerics proclaim.' *San Francisco Gate*. 31-10-2003.

⁷ Bar, Shmuel (2006), *Warrants for Terror - Fatwas of Radical Islam and the Duty of Jihad*. Lanham: Rowman & Littlefield Publishers, Inc. P. 70-71

⁸ Mowatt-Larssen, Rolf (2011), 'Islam and the Bomb – Religious Justification For and Against Nuclear Weapons'. Cambridge: Belfer Center for Science and International Affairs. P. 10

western world since the 1970s, cannot be considered as a key source of law. As a result, Mowatt-Larssen omits substantial and critical insights by not considering other key sources. Furthermore, even the sources considered in his work are not examined thoroughly: in the case of the *Qur'an*, only a few relevant verses have been provided and none are examined or interpreted according to the Islamic legal tradition in order to examine relevance to the subject matter.

Other works only offer a surface examination of the issue and none undertake to discuss legal aspects of the debate. Instead, most of the relevant body of work is centred on just war theory in Islam,⁹ one or several of the Muslim state actors' nuclear programmes,¹⁰ or the threat of nuclear terrorism.¹¹ John Kelsay has written extensively on the topic.¹²

The Iranian and Pakistani nuclear programmes have been examined from many angles by academics, including the narratives fashioned by each country to justify their nuclear programmes, as well as the role of the Islamic discourse in it.¹³ More generally, Steve Weissman and Herbert Krosney's *The Islamic Bomb* provides a survey of various nuclear weapons programmes across the Muslim world. However, their work dates back to 1981. Some of the nuclear weapons programmes assessed in the book are no longer relevant or even in existence, including those of Iraq and Libya, while others, including the Pakistani and Iranian programmes, have greatly evolved since its publication. Likewise, Al J. Venter's *Allah's Bomb* attempts to provide the reader with an overview of Muslim nuclear ambitions. The book, which was published in 2007, constitutes a good and relatively up-to-date source of information for understanding nuclearisation in the world of Islam. However, both volumes only superficially discuss the importance of the Islamic discourse in the context of these programmes.

Feroz Khan's *Eating Grass: The Making of the Pakistani Bomb* provides an extensive history of the inception and development of the Pakistani nuclear weapons programme

⁹ Kelsay, John (2007), *Arguing the Just War in Islam*. Cambridge: Harvard University Press.

¹⁰ Venter, Al J. (2007), *Allah's Bomb: The Islamic Quest for Nuclear Weapons*. Guilford: The Lyons Press.

¹¹ Ferguson, Charles. Potter, William (2004), *The Four Faces of Nuclear Terrorism*. Monterey: The James Martin Center for Nonproliferation Studies.

¹² Kelsay, John (1991), *Just War and Jihad*. Westport: Greenwood Press; (1993), *Islam and War: A Study in Comparative Ethics*. Louisville: Westminster/John Knox; (2007), *Arguing the Just War in Islam*. Cambridge: Harvard University Press.

¹³ Weissman, Steve and Krosney, Herbert (1981), *The Islamic Bomb*. New York: Times Books.

without fully exploring the nature and role of the Islamic discourse in shaping the Pakistani nuclear narrative and its role in fashioning the programme or nuclear policy.¹⁴

Iran's nuclear programme has been examined from many different angles.¹⁵ However, many fall short of providing an adequate overview of the country's culture, domestic and foreign policies, and nuclear programme. They especially fail to discuss the role of religion in Iranian foreign and nuclear policy, often resorting to gross generalisations and re-cycled clichés, including the claim that the Iranian 'obsession' with martyrdom is a key piece of the puzzle in determining Iran's behaviour should it weaponise.

Since 9/11, nuclear and wider WMD terrorism have generated substantial debate. Jihadists have attempted to justify the possession and, sometimes, use of such weapons. Scholars have assessed different aspects of WMD terrorism, including the viability of the threat of the procurement and use of these weapons by terrorists and their incentive to invest in them, as well as appropriate counter-terrorism measures which would allow individual governments and the international community to counter such an attack. They have further attempted to offer analysis on whether such an attack could be justified under Islamic law and how the legal question has shaped terrorists' discourse. Yet, when the Islamic legal debate comes into play, it is often shallow or ill informed. Philip Bobbitt, in an extensive study of what he calls 'market state terrorism',¹⁶ briefly assesses the legality of the actions perpetrated by Al-Qaeda under Islamic law, concluding that they are indeed illegal. Abdel Bari Atwan's *The Secret History of al Qaeda* provides an overview of the organisation's history and activities in various geographical regions.¹⁷ Jessica Stern's *The Ultimate Terrorists* discusses the threat of WMD being acquired and used by terrorists in a pre-9/11 era.¹⁸ Lastly, Shmuel Bar's

¹⁴ Khan, Feroz (2013), *Eating Grass – The Making of the Pakistani Bomb*. Stanford: Stanford Security Studies.

¹⁵ Patrikarakos, David (2012), *Nuclear Iran – The Birth of An Atomic State*. London: I.B. Tauris.

Gold, Dore (2009), *The Rise of Nuclear Iran – How Tehran Defies the West*. Washington, D.C.: Regnery Publishing, Inc.

Tertrais, Bruno (2007), *Iran – La Prochaine guerre*. Paris : Le cherche midi.

Delpech, Thérèse (2007), *Le grand perturbateur – réflexions sur la question iranienne*. Paris: Bernard Grasset.

¹⁶ Bobbitt, Philip (2008), *Terror and Consent: The Wars For the Twenty-First Century*. London: Penguin Books

¹⁷ Atwan, Abdel (2006), *The Secret History of al Qaeda*. Berkeley: University of California Press.

¹⁸ Stern, Jessica (1999), *The Ultimate Terrorists*. Cambridge: Harvard University Press.

Warrants for Terror: The Fatwas of Radical Islam and the Duty to Jihad provides an overview of the different *fatāwā* issued by Islamist militants.¹⁹

More broadly, the existing nuclear proliferation literature falls short of addressing some of the specifics of the cases under scrutiny in this project. The contributions of Jacques Hymans²⁰ and Scott Sagan²¹ to the study of proliferation drivers are invaluable to understanding states' motivations in acquiring nuclear weapons. The drivers widely perceived as the most important rationales leading states to develop a nuclear capability are: the national security model, the prestige model, the domestic political model, technological determinism, and the economic model. The next chapters build on Sagan's models to make three new contributions to the understanding of proliferation drivers. First, the drivers are generally understood as purely national. This thesis argues that they can also have a pan-Islamic dimension, as illustrated by the case of Pakistan. Second, while these drivers are generally used for state actors exclusively, Chapter Four argues that some of the same drivers could also be applied to non-state actors. Third, some of these drivers can be applied to nuclear technology, even without a military dimension. This is the case of Iran, which, regardless of its actual nuclear ambitions, has fashioned its nuclear narrative around technological determinism and prestige.

Here it is important to note that the prestige and security models are applicable to the broader Muslim world in its support for the Pakistani quest for an Islamic bomb. Indeed, some Muslim states saw the bomb as an opportunity to deter Israel and the west, while others saw it as 'a potent symbol for their importance on the world stage.'²²

It is clear from the existing academic literature that the Islamic legal position on nuclear weapons has been largely neglected. Moreover, the literature does not address the strategic implications of Islamic discourses related to nuclear weapons. In an effort to address this gap in the literature this thesis seeks to: draw an accurate picture of the Islamic legal debate surrounding the production, possession, threat, and use of nuclear weapons; examine this debate in the context of Al-Qaeda, Pakistan, and Iran; and assess

¹⁹ Bar, Shmuel (2006), *Warrants for Terror - Fatwas of Radical Islam and the Duty of Jihad*. Lanham: Rowman & Littlefield Publishers, Inc.

²⁰ Hymans, J. E. (2006). *The Psychology of Nuclear Proliferation: Identity, Emotions, and Foreign Policy*. Cambridge: Cambridge University Press.

²¹ Sagan, Scott. 'Why do States Build Nuclear Weapons?' in *International Security* 21, no 3 (Winter 1996/97). PP. 55-86

²² Frantz and Collins (2007), 23

the strategic implications thereof for arms control, non-proliferation, disarmament, and more generally regional stability and international peace and security.

Research question, method, and structure

The central research question the thesis seeks to answer is as follows: What are the strategic implications of the Islamic legal and ethical discourses developed by state and non-state actors to justify their nuclear weapon and/or energy ambitions? It argues that with the advent and institutionalisation of political Islam, as well as the increasing bearing of the debates surrounding the implementation of Islamic law across and beyond the Muslim world since the 1970s, Islam has become a major discourse and policy-shaping factor in international affairs. The thesis seeks to provide evidence of the relevance of Islamic discourses in shaping nuclear and foreign policy, as well as its impact on the non-proliferation regime, regional approaches to arms control, and international law and security. Indeed, the increasing radicalisation of the Muslim world provides grounds for various state and non-state actors to justify their actions according to the Islamic faith. This discourse can provide such actors with the religious validation required for their nuclear programmes or attempts to acquire a nuclear capability, as well as legitimacy among the Muslim community. Furthermore, the Islamic discourse developed by Iran and Pakistan can undermine international law and trust among nations, and consequently challenge regional power dynamics with implications for both regional and international security. Yet, the discourse can also be used to build trust and promote national and regional interests. Importantly, the role of such discourses within domestic debates on the legitimacy of these countries' nuclear programmes cannot be overlooked.

Several supplementary questions frame the overall project:

- Does Islamic law govern the production, stockpiling, possession, threat, or use of nuclear weapons?
- Are any of these ends in fact legal or prohibited by the divine legal framework?
- Which state and non-state actors have attempted to justify the acquisition or use of such weapons through the Islamic legal lens?
- What are their motives for seeking a rationale to justify their means of combat through this particular discourse?

- How does the Islamic discourse shape the nuclear narrative of a given actor? Who are the target audiences of the Islamic nuclear discourse in each case? Has the discourse been effective? Does the discourse shape policy or politics?
- Does the legality, or lack thereof, of nuclear weapons under Islamic law have policy or strategic implications, notably in terms of arms control, non-proliferation, disarmament, confidence building, and the prevention of nuclear terrorism? If so, what are they?
- To what extent does the Islamic debate in this area affect domestic, regional, and international peace and security?

The topic of the legality of nuclear weapons under Islamic law and its credibility and effectiveness has been a source of political debate and speculation since 9/11. However, this debate has been limited to the political *fora*, while in the academic world the topic has virtually remained *terra incognita*. In fact, while some are quick to dismiss the importance of the Muslim faith in shaping discourse and policy, others believe it to be all-important. Yet, no concrete evidence of either of these claims has been presented by the parties. As noted previously, this is due to the fact that such a study confronts several challenges that must be addressed simultaneously, notably the requirement for applying a comprehensive set of legal, political, and strategic tools for analytical purposes. The single most significant challenge lies in the methodologies required to conduct the research. This project, therefore, bridges the gap between these different areas of study with the objective of producing a multi-disciplinary and multi-layered assessment.

The project's approach is qualitative and empirical. It incorporates a hermeneutical analysis.²³ In other words, legal, ethical, and philosophical texts are interpreted. It draws on both primary material and secondary sources. The primary sources include semi-structured interviews and notes from on the record roundtables and panels. Other primary sources include legal ones, such as the texts of conventions, treaties, and protocols, as well as political, philosophical, and religious texts, such as speeches, interviews, official records (Congressional hearings and intelligence reports). The methodology for the legal deductions will follow the generally accepted methods amongst international and Islamic jurists. Chapter Three provides an overview of these

²³ Grondin, Jean (1994), *Introduction to Philosophical Hermeneutics*. New Haven: Yale University Press. 2

methods, including the interpretation of the Qur'anic verses, the methodology followed to determine the accuracy of a deed or words attributed to the Prophet or Imams, and the deduction, based on the precedents set by these deeds and words, of new laws. As noted previously, *fātāwa* are not a source of law in Islam. However, they shed light on the ethical and legal reasoning behind a given ruling, as well as the political and policy stance of various actors, as they are increasingly commissioned or issued to legitimise policies and galvanise popular support. The primary material includes such texts as the Holy Muslim Text (the *Qur'an*), compilations of the teachings of the Prophet and Imams or *ahādīth*, and legal interpretations and recommendations or *fātāwa*, national constitutions, and the texts of various international legal agreements and treaties, including the NPT and the Comprehensive Nuclear-Test Ban Treaty (CTBT). Declarations made by various government officials, assessments and reports issued by governments, non-governmental organisations, and international organisations, and government statements and reports are also assessed. The secondary sources include scholarly articles, books, policy briefs, and reports.

The Thesis

The thesis is composed of seven chapters, including the introduction and conclusion. Chapter One has introduced the issue, reviewed the existing literature, and established the methodological framework. Chapter Two offers an overview of the evolution of the just war theory and the inception of the contemporary international legal framework, especially as relevant to the conduct of warfare. It then surveys the different institutions and instruments governing nuclear weapons. This section is based on various existing international legal instruments, including key treaties, such as the NPT and the CTBT, as well as key cases and advisory opinions, including the 1996 International Court of Justice (ICJ) *Advisory Opinion* on the Legality of the Threat or Use of Nuclear Weapons. This chapter is not an attempt to reinvent the wheel, as various scholars and experts have covered the topic extensively. Instead, it provides a clear comparative basis for the Islamic law chapter, while placing the case studies in the context of the non-proliferation regime and the wider international legal framework.

Chapter Three briefly presents the role of Islamic law in the Muslim faith, before presenting the different sources of Islamic law and their importance and relevance to the

understanding of conflict and the nuclear debate. It then discusses the development of the Islamic rules of warfare and reviews various Muslim authorities and public figures' views and decrees on the matter. It is important to note that the Islamic legal system is an inherently complex framework, which cannot be studied and understood using the same analytical tools for evaluating modern legal frameworks. This section addresses Islamic legal issues relating to the question of the legality or prohibition of the production, possession, stockpiling, threat and use of nuclear weapons in the Islamic legal tradition. Key notions of Islamic law as well as its sources are identified, before providing relevant arguments from these texts. Furthermore, the cardinal norms of law of international armed conflict, introduced in Chapter Two are assessed in an Islamic context, in order to measure whether they are indeed relevant to this debate and can translate from one legal framework. Finally, historical illustrations of the conduct of the prophet and his followers in combat establishing precedents are provided. In doing so, the chapter tackles one of the main issues raised in this debate: whether there exists a single and coherent Islamic position or several different ones emerging from different schools of thought. This enterprise incorporates the assessment of the different sources constituting the Islamic legal structure. Given the very rudimentary stage of the Islamic legal debate surrounding nuclear weapons in scholarly discussions, it is important to note that the findings of this chapter are not final. Instead, the chapter serves to provide the reader with the tools to understand the discourses built on the framework.

The two legal chapters establish the basis for the following chapters, allowing each case study to be examined through the international and Islamic legal lens, before being assessed through a strategic and policy one. Accordingly, the chapters shed light on the different state and non-state actors' positions on the legal question and how they utilise the Muslim faith to promote their political and strategic goals.

Chapter Four examines the viability of the threat of nuclear terrorism and the instruments in place to counter such a threat. It then discusses why the thesis focuses on Al-Qaeda and does not discuss other terrorists groups. The chapter argues that Al-Qaeda is the only Islamist group which has been widely believed to pose a nuclear terrorism threat. Indeed, unlike Al-Qaeda, a terrorist network transcending boundaries, groups such as Hezbollah and the Harakat al-Muqawwima al-Islami (HAMAS) are attached to a given territory and population. Perpetrating a chemical, biological, radiological, or nuclear (CBRN) attack could effectively destroy such groups, as it could be traced back

to them, leading to a retaliatory response. Such a response can target the territories and populations associated with or represented by these groups, leading to the delegitimisation of the group. Al-Qaeda, by contrast, has not been historically tied to a particular territory or population.²⁴ What is more, other factors, such as the aims pursued by the group, play a vital role in its decision to use CBRN weapons.

Not all religious terrorists are equally likely to pursue mass destruction-many religiously motivated terrorist organizations have political components, represent constituencies that are well-defined geographically (and thus are subject to retribution), or depend for financial or logistical support on state parties or Diaspora communities whose view may not be quite as radical as their own. Second, it is the theological and cultural content of the particular strand of religious belief that is of greatest significance, rather than the mere fact that a group has a religious predilection. It has been asserted that the ideologies that are the most conducive to the pursuit of catastrophic violence are those that simultaneously reflect an apocalyptic millenarian character, in which an irremediably corrupt world must be purged to make way for a utopian future, and those that emphasize the capacity for purification from sins through sacrificial acts of violence.²⁵

While the assessment of the viability of the threat of such an attack by the group is beyond the scope of this project, the chapter is based on the idea that the threat of nuclear terrorism is real and Al-Qaeda remains the most likely candidate to perpetrate a CBRN attack. Hence, understanding its nuclear narrative is key to comprehending the motivations and goals of the leadership and how they fashion its nuclear ambitions. To provide a complete picture, the various statements and *fatāwā* issued by the network's leadership are examined. The religious authority of these decrees is also the subject of scrutiny. The chapter concludes by identifying the strategic implications of the Islamic nuclear narrative presented by Al-Qaeda, including its use as a vehicle for recruitment, fundraising, and legitimisation.

Chapter Five considers two key elements of the Pakistani case: Islam as an enabling driver and justification for the acquisition of the bomb, and the sale and transfer of nuclear kit to other Muslim states. To do so, it discusses the current status of the

²⁴ Maurer, Stephen (2009), *WMD Terrorism – Science and Policy Choices*. Cambridge, MA: The MIT Press. P. 22

²⁵ Ackerman, Gary. Tamsett, Jeremy (2009), *Jihadists and Weapons of Mass Destruction*. Boca Raton: CRC Press. P. xiv

Pakistani nuclear arsenal, before examining the nature and role of the Islamic discourse in its development. As such, the role and effectiveness of this discourse in galvanising the support of Muslim states and financing the development of the Muslim world's first, and thus far only, nuclear arsenal are scrutinised. A brief history of the inception of the state of Pakistan and the origins of Pakistani national identity, highlighting the importance of the Islamic faith in shaping the state, the nation, and its values, is offered. The chapter also assesses the role of the Muslim faith in shaping the views of key figures and decision-makers in the Pakistani programme. This includes the Pakistani leadership, as well as Abdul-Qadeer Khan, the 'father' of the Pakistani Bomb and the leader of the A.Q. Khan Network, responsible for smuggling nuclear materials and know-how to a dozen countries, including many Muslim states. It also highlights the key role of the bomb in Pakistani national identity and its relationship to the Muslim faith. Furthermore, given the country's on-going political instability, many fear that Pakistani nuclear materials and facilities are among the most vulnerable to terrorist exploitation.²⁶ This would especially be the case if the current political system collapses and leads to what some have called 'nuclear warlordism'.²⁷ This risk of nuclear terrorism and its potential to occur with Pakistani nuclear weapons are discussed. The chapter concludes by providing a brief comparison with the following one.

The sixth chapter begins by looking into the evolution of Iran's nuclear programme from the 1970s, with a particular focus on its current status. It briefly discusses the Shah's nuclear aspirations and narrative before reviewing the implications of the Iran-Iraq War for the nuclear dossier. It then discusses the issue of the dichotomy of national identity and the Muslim faith in Iran, before applying this historically conflicting relationship to the nuclear debate. To do so, the Islamic Republic's structure and approach to international law and its supporting institutions are discussed. This includes the checks and balances of the Islamic regime, and their applicability to the nuclear issue, including the relationship between power and Islamic law. The role and place of the Islamic legal discourse in Iran's nuclear narrative are assessed. The Iranian case is central to the legal debate, as its leadership has essentially fashioned its nuclear narrative around the idea that Islam and WMD are fundamentally incompatible.

²⁶ Bunn, Matthew (April 2010), 'Securing the bomb 2010 – securing all nuclear materials in four years'. Project on Managing the Atom, Belfer Center for Science and International Affairs, Harvard Kennedy School. Nuclear Threat Initiative. P. 28

²⁷ Kakutani, Michiko. 'Surveying a Global Power Shift – "Strategic Vision," by Zbigniew Brzezinski.' 29-01-2012.

Furthermore, the country's programme has generated substantial debate regarding its potential domino effect across the Middle East, as well as the danger it could allegedly pose to the existence of Israel. The Islamic legal discourse provides the grounds for an analysis of Tehran's different target audiences. The effectiveness of this discourse in galvanising support and legitimising the programme at home and abroad are also scrutinised. Moreover, the chapter considers the implications of the Islamic legal dimension of the Iranian nuclear programme for international efforts to cap or roll it back.

The final chapter draws together the analysis by comparing and contrasting the different legal stances and discourses across the three case studies. It also examines the cumulative impact of these findings on various strategic issues ranging from nuclear arms control, non-proliferation, and disarmament, to international efforts to prevent nuclear terrorism. It concludes that Islamic law views nuclear weapons through the same lens as international law, by essentially examining the same set of ethical and legal principles, including the obligation to distinguish between combatants and noncombatants, not to harm the latter, and to protect the environment. These are formulated in international law as the 'cardinal norms' of international humanitarian law, in Islamic law, they constitute precedents and principles jurists rely on for their rulings on the legality of classes of weapons. Yet, given its cultural specificity, Islamic law is not implementable on a global-level but various Muslim actors have effectively used it to promote their interests. Nevertheless, Islamic law does not ultimately shape policymaking, yet the Islamic narrative has been very effective in providing its users with financial and political support, and helped them recruit volunteers. However, the effectiveness of the discourse stems from *realpolitik* and not from the viability of the Islamic legal and ethical discourse itself. The conclusion highlights the importance of the Islamic legal discourse in confidence-building, and how difficult actors make it for themselves to change their position once they justify their nuclear activities using the Islamic legal system.

Chapter Two: The legality of nuclear weapons: International law

This chapter provides the basis for the rest of the thesis. First, it offers a point of comparison to facilitate the comprehension of the Islamic legal system. Second, it places the case studies within the international legal context. This is key to understanding the position of each actor on international law and affairs and its utilisation of the Islamic discourse. Three thematic strands shape this chapter:

- The role of the broader philosophical and ethical discussions around war in fashioning the legal approach to it historically, encapsulated by just war thinking.
- How international legal instruments govern various stages of the development of nuclear weapons and their use.
- The parallels and points of divergence between international law and *shari'a*.

The chapter begins by providing an overview of the historical context in which the international legal framework has been developed. By doing so, it ties the existing international legal framework to the Christian tradition in which it was formed, more particularly, the just war tradition. It then surveys the different international legal instruments in place – or being developed – that regulate nuclear weapons.

International law – a historical overview

The modern international legal framework was established to govern relations between nation-states in both war and peace. These relations are founded on what is widely considered as both the cornerstone of international law and international affairs: the notion of sovereignty. Sovereignty is the idea of the ultimate right to decision-making without foreign involvement.

¹ This idea, in turn, holds the notion of mutual recognition as a precondition and entails that no state should be left to ‘disappear against its will’. Hence, since the end of World

¹ These ideas are encapsulated in Article 2§4 of the United Nations Charter, which states that ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’

War II, no state, except in cases of reunification (i.e. Germany, Vietnam) has disappeared, while a number of states have emerged.²

The nation state [das Volk als Staat] is the spirit in its substantial rationality and immediate actuality, and is therefore the absolute power on earth; each state is consequently a sovereign and independent entity in relation to others. The state has a primary and absolute entitlement to be a sovereign and independent power in the eyes of others, i.e. to be recognized by them. At the same time, however, this entitlement is purely formal, and the requirement that the state should be recognized simply because it is a state is abstract. Whether the state does in fact have being in and for itself depends on its content – on its constitution and [present] condition; and recognition, which implies that the two [i.e. form and content] are identical, also depends on the perception and will of the other state.³

International law was established to guarantee what Hedley Bull calls the elementary or universal goals pursued by all societies, which are the practical equivalent of natural law theory. They lie in the protection of life, insurance that promises are kept (contracts and agreements are honoured⁴ to facilitate human relations), and the assurance that possessions will be stable to some extent.⁵ International law, then, is a living and evolving body of law and serves to make relationships among peoples more predictable.⁶ Enlightenment German philosopher Christian von Wolff argued that the international community should serve as a supranational regulating body (*civitas maxima*). As such, the legal framework and the institutions supporting it, in their current form, is the product of centuries of evolution, with roots in the Hellenic philosophy of right and the Roman legal system. It was in the latter that the distinction between *jus civile*, the laws regulating the lives of the citizens of the empire, and those regulating matters transcending *jus civile* came into being. The second category comprised inter-state laws (*jus inter civitates*) and *jus gentium* (also known as *jus inter gentes*) or the forefather of contemporary international law. The system and the justice it represents are the direct result of reforms undertaken by Christian theologians, political and legal theorists, and jurists. The framework is based on an understanding of the concept of justice, fashioned around the central idea that, ‘man is the measure of all things’. In that sense, this philosophical precondition framed by Protagoras distinguishes modern

² Müllerson, Rein (2000), *Ordering Anarchy: International Law in International Society*. The Hague: Martinus Nijhoff Publishers. P. 121

³ Hegel, G.W.F (1991), *Elements of the Philosophy of Right* (Edited by Allen Wood), Cambridge: Cambridge University Press. §331

⁴ This has been formalised in international law as the notion of *pacta sunt servanda* or the presumption that agreements are to be upheld in good faith (*rebus sic stantibus*).

⁵ Bull, Hedley (2002), *The Anarchical Society*. New York: Columbia University Press. P. 4

⁶ *Ibid.*, 7

secular laws from divine laws, which recognise God as the measure of all things. Thus, in contrast to divine laws, secular ones can be universal. Yet, this secular framework was developed at the heart of the Christian tradition and some of its forefathers and most influential thinkers were men of the Church. Their contribution to legal theory and the development of the modern notions of law and justice were greatly informed by Hellenic philosophy.

Protagoras' humanist approach allowed fifth century theologian, Augustine of Hippo, to argue that, 'that which is not just seems to be no law at all'.⁷ This in turn provided ground for thirteenth century Italian theologian, Thomas Aquinas, to state that, 'a command has the force of law in so far as it is right according to the rule of reason.'⁸ The centrality of the 'rule of reason' in turn led Aquinas to elaborate another fundamental idea: 'human laws should be adapted to the common good. But the common good consists of many things, and so the law must take many things into account, having regard to persons and matters and times.'⁹ This evolution in legal thought became the source of the transition from the so-called 'Old Law' to 'New Law'. Aquinas compares the latter to the former as 'the perfect to the imperfect.'¹⁰ He notes that:

Two things of every law is to make men righteous and virtuous, [...] and consequently the end of the Old Law was the justification of men. The Law, however, could not accomplish this: but foreshadowed it by certain ceremonial actions, and promised it in words. [...] Wherefore the New Law is called the law of reality; whereas the Old Law is called the law of shadow or of figure.¹¹

Supporting this position, fifteenth century philosopher and theologian, Nicholas of Cusa, emphasised that 'all legislation is based on natural law and any law which

⁷ Aquinas, *Summa theologiae*: I^aII^ae, q 95, a 2

⁸ *Ibid.*, I^aII^ae, q 95, a 3-4

⁹ *Ibid.*

¹⁰ *Ibid.*, I^aII^ae, q 107 a 4

¹¹ *Ibid.*

Aquinas further breaks down the reasons why temporal laws (as opposed to divine laws) should be changeable by referring to Augustine. 'Augustine says at *De libero arbitrio* I: 'A temporal law, no matter how just it may be, can be justly changed in the course of time.' As stated above, human law is a dictate of reason by which human acts are directed. Accordingly, there can be two reasons why human law may be justly changed: one having to do with reason, the other having to do with man, whose acts are regulated by law. As regards reason, it seems natural for human reason to advance gradually from the imperfect to the perfect. Hence in the speculative sciences we see that what the first philosophers taught was in some degree imperfect, and was afterwards made more perfect by their successors. So too in practical matters. For those who first set out to discover something useful for the community of mankind, because they were not by themselves able to take everything into account, made certain imperfect arrangements which were deficient in many ways, and these were changed by their successors, who made other arrangements which would fail to secure the common welfare in fewer cases.' *Ibid.*, I^aII^ae, q 96 a 4

contradicts it cannot be valid. Hence since natural law is naturally based on reason, all law is rooted by nature in the reason of man.¹²

In this evolution lies what the first Persian thinker to write a book about the law, advocating for codification in Persia, Mostashar al-Doleh, and his contemporaries were seeking to explain the reasons behind the west's progress and the Muslim world's lack thereof. Indeed, the main difference between the Islamic and Christian systems lies in the fact that while the second revolves around the idea of a natural law (*lex naturalis*), the former suffers from a lack of substantial debate on the topic.¹³ Islam, as all religions, has an embryonic natural law, which recognises human dignity. 'Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one [soul] - it is as if he had saved mankind entirely.'¹⁴ This illustrates Islam's position on what international law would later define as 'human dignity' and the 'right to life'. These can be subject to conditions as demonstrated in the next chapter. However, Islam's positive divine law can be contradictory to its embryonic natural law.

The emergence of the international system

The current international order was founded on two key prerequisites granting political communities two fundamental rights: territorial integrity and political sovereignty. These are the 'collective form' of 'individual rights (to life and liberty)' and 'rest on the consent of [the] members' of these political communities.¹⁵ In fact, according to some theorists, including Fernando Tesón, it is vital for international law and relations to be extrapolated from the notion of individual rights and to be centred on the individual.¹⁶ This 'consent' is what Thomas Hobbes and Jean-Jacques Rousseau call 'the social contract', explained by Michael Walzer as 'a metaphor for a process of association and mutuality'. It is this 'contract' that 'the state claims to protect against external encroachment'.¹⁷ This social contract brings an end to the state of nature, which is one of *bellum omnium contra omnes*.

¹² Nicolaus Cusanus. *The Catholic Concordance*, II para. 130

¹³ Commission théologique internationale (2009), 1.1 (17)

¹⁴ *Quran*, 5:32

¹⁵ Walzer, Michael (2006), *Just and Unjust Wars*. New York: Basic Books. P. 53

¹⁶ Müllerson, Rein (2000), 60

¹⁷ Walzer, Michael (2006), 54

During the seventeenth century, ‘the emerging international system was aided in its formation by the overriding necessity to territorialize religion, and by the will-to-power of state elites in the new wars of the sixteenth century.’¹⁸ Two principles helped shape the new international system: exclusion and mutual recognition. The first provided that any entity that was not ‘coherently territorial and exclusively sovereign within’ was ‘progressively deligitimated and expelled’ from the system. The second required a state’s membership of the system to be based on its acceptance by other states as the sole authority of a definite territory.¹⁹

The modern state has three defining characteristics. First, it has a definite territory with boundaries as its exterior. Second, it has exclusive control of that territory: “sovereignty” means that no other entity can substantiate a claim to rule in this space. Third, hierarchy, that is, the state is a superior political agency that determines the role and powers of all subsidiary governments.²⁰

The distinction between ‘internal and external policy’ is a defining factor in modern sovereignty and holds its roots in the Westphalian order, which allowed the ‘depoliticization that structure[d] the international system up to 1914.’ The internal factor paved the path for a wider acceptance of ‘the norm of non-intervention’, which led states to control their societies and contain the level of domestic conflict. The norm contained inter-state interactions within the triangle of commerce, diplomacy, and war.²¹ The external factor steered states away from ‘ideology as the principle of their relations in favour of the primacy of reason of state.’ This meant that these relations could ‘be primarily a matter of the balance of power and the acquisition of territory in Europe and colonies abroad.’²²

The end of the Second World War and the acceleration of a rapid process of globalisation by the end of the Cold War entailed changing security concerns. This change was stressed by the technological revolutions of the second half of the twentieth century, not least by the advent of the nuclear age. ‘A variety of factors have contributed to this feeling of insecurity. Interactions between state and non-state entities within the international system, for example, are occurring at a faster pace.’ What is

¹⁸ Hirst, Paul (2001), *War and Power in the 21st Century*, Cambridge: Polity. P. 54

¹⁹ Giddens, Anthony (1985), A, *A Contemporary Critique of Historical Materialism*, Vol. 2: *The Nation-State and Violence*. Cambridge: Polity. P. 282

²⁰ Hirst, Paul (2001), 45

²¹ *Ibid.*, 56

²² *Ibid.*, 54-57

more, non-governmental organisations and terrorist networks alike ‘are exerting an increasingly powerful influence in the international system.’²³

The development of the notion of raison d’État

This section provides a brief overview of the emergence and significance of the notion of reason of state (*raison d’État*), as it is key to understanding the modern international affairs and the development of international law. Italian Jesuit monk Giovanni Botero formulated the notion, which became crucial to the understanding of foreign affairs and international relations in the sixteenth to eighteenth centuries but lost its predominance until its reemergence in the contemporary era. This idea, while having been developed independently from *realpolitik*, is connected to the realist school of international relations, as implemented by Prussian Chancellor Otto von Bismarck. In this context, war can be explained ‘as simply the pursuit of the ruler’s – later a state’s – interest’. In other words, ‘sovereigns have the power to make war for their own purposes.’ This approach to war emerged in the late medieval period.²⁴

Reason of state is founded on the core assumptions of a realism discourse on foreign policy. Those assumptions are that conflicts are mainly phenomena generated by factors within the international system, that states are the primary actors in that system, and that member states of the system may be friends of enemies in the future as circumstances dictate.²⁵

The notion also serves other purposes. It ‘limits the enmity of interstate relations in that it makes them a matter of pure power technique: one’s enemy is not an implacable foe but an honourable opponent in a conflict of interest.’²⁶ Yet, Paul Hirst argues that ‘the thinkers of the Enlightenment would come to see reason of state as cynical and as not merely morally neutral but immoral.’²⁷ This view became more universal in the post-Cold War era, as ‘pure reason of state was tempered by common moral sentiments’.²⁸ The following chapters argue that despite this evolution, reason of state continues to play a major role in determining the approach of states to their foreign policy. This is especially the case with regard to the nuclear issue.

²³ Russel, James. Wirtz, James (2008), *Globalization and WMD Proliferation – Terrorism, Transnational Networks, and International Security*. London: Routledge. P. 8

²⁴ Reggner, Nicholas (2013), *Just War and International Order – The Uncivil Condition in World Politics*. Cambridge: Cambridge University Press. P. 41

²⁵ Hirst, Paul (2001), 59

²⁶ *Ibid.*

²⁷ *Ibid.*, 58

²⁸ *Ibid.*, 69

The just war tradition

The use of force is what distinguishes international politics from domestic politics, viewed as ‘pacified’.²⁹ States have the monopoly on the legitimate use of force, but within the boundaries established by the international system.³⁰ Indeed, a comprehensive set of rules and laws ‘separate war, as an awful but legitimate political process, from that which would otherwise be criminality, pure and simple.’³¹ As highlighted by James Gow, ‘the very notion of war crimes shows that warfare is subject to rules, and these rules, when cast as laws, define war crimes.’³² Furthermore, ‘the moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons parties have for fighting, secondly with reference to the means they adopt.’³³ This section provides a brief overview of just war thinking in the western tradition and the two sets of moral codes it has given birth to: *jus ad bellum* (just cause) and *jus in bello* (just conduct).³⁴

The just war tradition is one of ‘remarkable longevity and great complexity’. A key element of the tradition lies in ‘its relationship to ideas about authoritative political community.’ Indeed, ‘legitimate force, for the just war tradition, is (whatever else it is) force used by a political community with “right authority”; that is to say, it is public (not private) violence, and it is exercised by those who have proper authority in the political community.’³⁵ This authority’s decision to go to war (*jus ad bellum*) and the means it adopts in the conduct of warfare (*jus in bello*) are two independent components of just war thinking. Hence, a war waged with a just cause can be conducted unjustly.³⁶ In other words, breach of *jus ad bellum* does not justify breach of *jus in bello*. Yet, the opposite seems less clear.

The chief British prosecutor at Nuremberg put this argument into the language of international law when he said, “The killing of combatants is justifiable... only where the war itself is legal. But where the war is illegal...there is nothing to justify the killing and these murders are not to be distinguished from those of any other lawless robber bands.”³⁷

²⁹ Rengger, Nicholas (2013), x

³⁰ Weber, Max (1946), *From Max Weber: Essays in Sociology*. New York: Oxford University Press. P. 78

³¹ Gow, James (2013), *War and War Crimes – The Military, Legitimacy and Success in Armed Conflict*. New York: Columbia University Press. P. 3

³² *Ibid.*, 3

³³ Walzer, Michael (2006), 21

³⁴ Gow, James (2013), 3

³⁵ Rengger, Nicholas (2013), xi

³⁶ Walzer, Michael (2006), 21

³⁷ *Ibid.*, 38

Walzer clarifies this point by stating that ‘superior orders are no defence’ in the case of violation of the ‘war convention’. This means that the combatant is responsible and can be held accountable for the war crimes he commits. However, he cannot be held responsible for the war itself.³⁸ Walzer underlines the role played by the nature of the political system in the degree of guilt of the decision-makers. Indeed, as noted by J. Glenn Gray, the degree to which one can be held accountable for one’s actions depends on the degree to which one performs them freely. In other words, ‘the greater the possibility of free action in the communal sphere, the greater the degree of guilt for evil deeds done in the name of everyone.’³⁹

Arguments are made for the inclusion of a third criterion to complement *jus ad bellum* and *jus in bello* in defining whether a war is just. The proponents of this way of thinking contend that one must consider not only the cause of, and the means employed in, warfare, but also its end. Walzer critiques the Clausewitzian idea of ‘the overthrow of the enemy’, noting that ‘many wars end without any such dramatic ending, and many war aims can be achieved well short of destruction and overthrow.’ Hence, it is important to ‘seek the legitimate ends of war, the goals that can rightly be aimed at. These will also be the limits of a just war.’⁴⁰

The following section provides an overview of the evolution of the just war tradition and its relationship to the emergence of the international laws governing warfare. First, the origins of this tradition and its evolution throughout the centuries, leading to the twenty-first century, are assessed. Second, the creation of the atom bomb and the emergence of the notion of nuclear deterrence, as a turning point in the just war tradition, are overviewed. Third, the impact of the terrorist attacks of 11 September 2001 and the formation of the idea of a ‘War on Terror’ in the reassessment of the just war tradition is examined.

Defining war

Before providing a historical overview of the emergence of the contemporary legal instruments governing warfare,⁴¹ and more specifically nuclear weapons, it is important

³⁸ *Ibid.*, 39

³⁹ Gray, J. Glenn (1959), *The Warriors: Reflections on Men in Battle*. New York: Harcourt. P. 199

⁴⁰ Walzer, Michael (2006), 110

⁴¹ Warfare: ‘the conduct of militaries’; in Gow, James (2013), 1

to define the term ‘war’. Roman philosopher Cicero defines war as a ‘dispute by force’. Clausewitz’s classic definition of war is ‘a true political instrument, a continuation of political inter-course, carried on with other means.’⁴² Seventeenth century Dutch jurist Hugo Grotius notes, ‘Custom has so prevailed, that not the Act of Hostility, but the State and Situation of the contending Parties, now goes by that Name; so that War is the State or Situation of those (considered in that Respect) who dispute by Force of Arms.’⁴³ Gow defines it as ‘a social phenomenon involving specific, dedicated social organisations (armed forces) in the management of restrained coercive violence for political purpose, governed by rules and conventions.’⁴⁴ Nicholas Rengger argues that, ‘to use the term “war” at all is also to recognise that there is an ineliminably communal element involved. “War” is violence waged by, and on behalf of, communities. It is not simply violence as such.’⁴⁵ He further notes that:

On the one hand, war is a manifestation of disorder in international society, bringing with it the threat of breakdown of international society itself into a state of pure enmity or war of all against all. The society of states, accordingly, is concerned to limit and contain war to keep it within the bounds of rules laid down international society itself. On the other hand, war –as an instrument of state policy and a basic determinant of the shape of international system– is a means which international society itself feels a need to exploit so as to achieve its own purposes. Specifically, in the perspective of international society, war is a means of enforcing, of preserving the balance of power, and arguably, of promoting changes in the law generally regarded as just.⁴⁶

According to Gow, while the essence of war has not changed, ‘the character of its conduct changes periodically in relation to social and technical conditions.’⁴⁷ Likewise, the rules and laws governing warfare change according to these social and technical transformations. It is important to note that technology generally evolves faster than the law and most technological innovations can be found on the battlefield before they are conceptualised within the legal framework.

As mentioned previously, the basis for the modern framework governing warfare lies in the just war tradition, which has evolved to meet these new social and technical requirements. ‘The just war tradition goes back surely to Augustine and Ambrose,

⁴² Clausewitz, Carl von (1993), *On War*. London: David Campbell. PP. 111

⁴³ Grotius, Hugo (1853), *Rights of War and Peace*. Cambridge: Cambridge University Press. Vol. 1. Chapter I, II.i

Grotius further notes that the Latin word, *Bellum*, comes from *Duellum* or duel

⁴⁴ Gow, James (2013), 1

⁴⁵ Rengger, Nicholas (2013), 3

⁴⁶ Bull, Hedley (2002), 181

⁴⁷ Gow, James (2013), 3

perhaps as far back as Cicero, or even Aristotle.’⁴⁸ Here, it becomes important to distinguish between the just war tradition and the just war doctrine.

The just war tradition *tout court* indeed pre-dates the modern period but [...] the just war *doctrine* – that is to say the tradition as an articulate, self-aware and considered whole – only emerges as a settled doctrine at the beginning of the modern period and changes rather dramatically throughout it, most especially in the period of its so-called “revival” after the Second World War.⁴⁹

Whether or not a war is just, argues Renaissance Italian thinker Niccollo Machiavelli, can only be defined by its necessity. Indeed, ‘War is just to whom it is necessary, and arms are pious to those for whom there is no hope save in arms’.⁵⁰ Twentieth century American sociologist Charles Tilly argues that statehood and warfare are inherently linked. To borrow his words: ‘war made the state and the state made war’.⁵¹ Therefore, war became a permanent factor in international affairs. Yet, this paradigm seemed to be shifting during the last decade of the twentieth century, as ‘a cautious but growing optimism [indicated] that the worst aspects of war were at last being brought under some sort of control’.⁵² This was due to several factors.

The growing reach and appeal of globalization, the growing “thickness” of international law and institutions, especially in the area of human rights and their protection, the evolution of notions of “humanitarian intervention”: all were credited, severally or collectively, with helping to tame war [...] “sub-rationally unthinkable”.⁵³

Nevertheless, warfare continues to be a permanent factor in international affairs. The next section defines and places the central notion of strategy in these two contexts.

Defining strategy

The term ‘strategy’ holds its roots in the Greek *strategos*. ‘The *strategoï* were mainly military leaders with combined political and military authority, which is the essence of **strategy**. Because **strategy** is about the relationship between means and ends, the term has applications well beyond war’.⁵⁴ In the context of war, Clausewitz defines strategy as ‘the use of engagements for the object of the war’. According to the

⁴⁸ Rengger, Nicholas (2013), 2

⁴⁹ *Ibid.*, 2

⁵⁰ ‘*Justum est bellum quibus necessarium.*’

Machiavelli, Niccolò, *Discourses on Livy*. III.12.248/458

⁵¹ Rengger, Nicholas (2013), 33

⁵² *Ibid.*, 36

⁵³ *Ibid.*

⁵⁴ “Strategy”, *Encyclopaedia Britannica. Encyclopedia Britannica Online Academic Edition*. Encyclopaedia Britannica Inc., 2014. Web. 23 May 2014.

Clausewitzian view, ‘the original means of strategy is victory’, defined by ‘tactical success’. Its ends ‘are those objects which will lead directly to peace’. Hence, strategy ‘assigns a particular aim’ to engagement.⁵⁵

More broadly, strategy is commonly defined as ‘being about maintaining a balance between ends, ways, and means; about identifying objectives; and about the resources and methods available for meeting such objectives’. As noted by Lawrence Freedman: ‘This balance requires not only finding out how to achieve desired ends but also adjusting ends so that realistic ways can be found to meet them by available means.’ He writes that the term ‘remains the best word we have for expressing attempts to think about actions in advance, in the light of our goals and our capacities.’ He argues that ‘by and large, strategy comes into play where there is actual or potential conflict, when interests collide and forms of resolution are required.’⁵⁶

Antiquity to the medieval period

As mentioned previously, the origins of just war thinking can be traced back to antiquity and the Greco-Roman traditions and biblical Israel.⁵⁷ The theory ‘emerge[d] out of the encounter of such general practices of war fighting and legitimation with specifically Christian concerns about the legitimacy of fighting at all.’⁵⁸ These roots provide the just war tradition with ‘its early logic, much of its power, a good deal of the tensions that still exist within it and, in particular, creates the assumptions out of which the distinction between *jus ad bellum* and *jus in bello* grows.’⁵⁹ Yet, this distinction, which is at the heart of just war thinking as we know today, is not articulated by such key just war thinkers as Augustine and Aquinas. In fact, the tradition, in its ‘coherent and systematic form’, only ‘came together in the Middle Ages, over roughly the three centuries from the canonist Gratian’s magisterial collection, the *Decretum*, in the mid-twelfth century to the end of the Hundred Years’ War in the mid-fifteenth century.’⁶⁰

⁵⁵ Clausewitz, Carl von (1984), *On War*. Princeton: Princeton University Press. PP. 127-47

⁵⁶ Freedman, Lawrence (2013), *Strategy: A History*. Oxford: Oxford University Press. IX-XI

⁵⁷ 168

⁵⁸ Rengger, Nicholas (2013), 70-71

⁵⁹ *Ibid.*

⁶⁰ Johnson, James T. (2006), ‘The Just War Idea: The State of the Question’. *Social Philosophy & Policy Foundation*. Vol. 23, issue01, January 2006. PP. 167-195.158

Aquinas identified three criteria for just war: ‘the authority of the sovereign by whose command the war is to be waged’, a just cause, and ‘rightful intentions’.⁶¹ Aquinas bases his first criterion on the foundations provided by Augustine, according to which, only those (sovereigns) with supreme authority can ‘declare and counsel war’. The second criterion requires that war be only declared to those ‘who deserve it on account of some fault’. The third criterion of rightful intentions provides that one engages in warfare with the intent to advance good or to avoid evil.⁶² The contributions made by Aquinas to just war thinking and the development of *jus in bello* paved the way for future advancement of the tradition.

The School of Salamanca,⁶³ particularly, Francisco de Vitoria and Francisco Suarez, greatly contributed to the emergence of *jus ad bellum* and *jus in bello*. They argued that ‘while *in truth* (i.e. in the sight of God) there is no such thing as a war just on both sides, human knowledge is not up to judging this with any degree of accuracy.’⁶⁴ This led them to undertake to place restraints on the causes of war. These arguments ‘[raise] the significance of the *jus in bello* and [begin] the process of separating out the two parts of the tradition as we understand today.’⁶⁵ Moreover, Vitoria first elaborated the ‘Augustinian notions of right intent and the existing contemporary restrictions via canon law and the customs of arms, taken together as a restriction on how we should understand who is legitimately a combatant.’⁶⁶ The idea of distinction between combatant and noncombatant and the immunity granted to the second by *jus in bello* is therefore based on the Vitorian view that, ‘the sole and only just cause for waging war is when harm has been inflicted.’ The prince, Vitoria argues, ‘cannot have greater authority over foreigners than he has over own subjects; but he may not draw the sword against his own subjects unless they have done some wrong; therefore he cannot do so against foreigners except in the same circumstances.’ Vitoria further contends that ‘not every or any injury gives sufficient grounds for waging war.’⁶⁷ Thereby this presumption ‘places a premium on the limitation of the destructiveness not merely for

⁶¹ Aquinas, *Summa theologiae*: I^aII^ae, q 40, a 1

⁶² *Ibid.*, I^aII^ae, q 40, a 1

⁶³ The School of Salamanca, named after the University of Salamanca, where its members were based, was founded by Portuguese and Spanish Catholic theologians in the sixteenth century. It sought answers to the problems emerging from the religious and political developments of its period. The school based its discussions on Aquinas’ teachings and reevaluated natural law.

⁶⁴ Rengger, Nicholas (2013), 76

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Francisco De Vitoria (1991), *Political Writings*. Cambridge: Cambridge University Press. P. 303-304

moral reasons but for epistemic ones: we do not know who is in the right'.⁶⁸ Vitoria's contribution to just war thinking is revolutionary in that he did not merely focus on the right of the 'civilised' people (i.e. Christians) in warfare, but rather those of all peoples regardless of religion. In *On the American Indians*, he argued against the common belief of his time, according to which 'barbarians' could not be governed by the same laws as those applicable to Christians. In other words, the same laws should be applicable to non-Christians as to Christians.⁶⁹ As such, Vitoria argued for a law of nations, which would be established by and govern 'the whole world, which is a sense of commonwealth'.⁷⁰ He also discussed the notion of a 'divine mandate' to wage war, and argued against the idea of conversion by armed conflict.⁷¹ These ideas are further assessed in Chapter Four in the context of the Jihadist justification of their struggle (*jihad*) under the banner of a divine mandate.

The School of Salamanca paved the way for Hugo Grotius, Emmerich de Vattel, and other thinkers whose ideas have provided the basis for the modern legal framework governing warfare. The framework is shaped around the central idea and main purpose of the just war theory, of 'limit[ing] the occasions of war.' This goal is achieved by discounting all causes short of aggression as justifiable causes of war. Vitoria writes: 'There is a single and only cause for commencing a war, namely, a wrong received.'⁷² Later, Grotius noted that one's right to self-defence is inalienable.

It is to be observed, that this *Right of Self-Defence*, arises directly and immediately from the Care of our own Preservation, which *Nature* recommends to every one, and not from the Injustice or Crime of the *Aggressor*; for if the Person be no Ways to blame, as for Instance, a *Soldier who carries Arms with a good Intention*; or a Man that should *mistake me for another*; or one *distracted*, or *delirious*, (which may possibly happen) I don't therefore lose that *Right* that I have of *Self-Defence*: For it is sufficient that I am not obliged to suffer the Wrong that he threatens to do me, no more than if it was a Man's *Beast* that came to set upon me.⁷³

Walzer notes that, 'the theory of aggression restates the old doctrine of the just war: it explains when fighting is a crime and when it is permissible, perhaps even morally desirable.'⁷⁴ In addition to the need for a just cause to wage war, Grotius identified

⁶⁸ Rengger, Nicholas (2013), 76

⁶⁹ Francisco De Vitoria (1991), 279

⁷⁰ *Ibid.*, xv

⁷¹ *Ibid.*, xv

⁷² Walzer, Michael (2006), 62

⁷³ Grotius, Hugo (1853), Vol. II. Chapter 2, III (397)

⁷⁴ Walzer, Michael (2006), 59

another key criterion, which falls under *jus in bello*, that of moderation in warfare (*temperamenta belli*).

Post-Renaissance

The following centuries saw the emergence of new responses to war. ‘By the mid eighteenth century, the dominant response to the interrelationship of war and politics is best seen as a synthesis of the heroic⁷⁵ and the realpolitik responses’. During the eighteenth and nineteenth centuries, a persistent yet minority response was what Rengger qualifies as ‘compassionate’. This response held its roots in the objection to violence engrained in the Christian tradition, as well as the humanism of the Renaissance. It draws from Renaissance scholar Desiderius Erasmus and later l’Abbé de Saint Pierre’s *La paix perpétuelle* and views war as a ‘wasteful spectacle’ of ‘heroism empty’. This view of war ‘permeates much of the thinking of the Enlightenment on politics, especially for example, the writings on international relations of Rousseau and German philosopher Immanuel Kant’ and constitutes what Michael Barnett formulates as ‘the humanitarian big bang’, taking compassion ‘from private to public realm’.⁷⁶ Likewise, the just war response ‘never viewed war as heroic [...], has never accepted that political communities can legitimately pursue their interests irrespective of what those interests are [...], and has never supposed that war can be abolished or overcome’.⁷⁷

It is doubtful if any ruler or government ever decided whether a war should be waged by strictly applying Just War criteria. Yet these criteria provided a standard by which the rightness of going to war, and the manner of waging the war, conducted by ivory-tower theologians, these criteria were deeply assimilated into the social consciousness of many “Christian” nations.⁷⁸

As noted previously, Hugo Grotius is one of the most influential figures in just war thinking. In his survey of the *oeuvres* covering warfare, he notes that while his work builds on the various works of the French and Spanish theorists and theologians, his enterprise distinguishes itself by introducing the notion of a ‘right of war’ for the first

⁷⁵ Rengger, Nicholas (2013) defines the heroic response as ‘ugly’ but ‘also a peculiarly human institution’ (p. 40)

⁷⁶ *Ibid.*, 42-43

⁷⁷ *Ibid.*, 48

⁷⁸ McCall, Malcolm. Ramsbotham, Oliver (1990). *Just Deterrence – Morality and Deterrence into the Twenty-First Century*. London: Brassey’s. P. 8

time.⁷⁹ Grotius notes that ‘there is some Right common to all Nations, which takes Place both in the Preparations and in the Course of War’.⁸⁰ In response to the conventional wisdom of his time, which held that war is void of law, he writes that that is only the case insofar as these are ‘those Laws that are Civil and Judicial, and proper for Times of Peace; but not those that are of perpetual Obligation, and are equally suited to all Times.’ He bases this claim on the Roman approach to war, referring to Camillus: ‘Wars ought to be managed with as much Justice as Valour.’⁸¹ Like his predecessors, he emphasises the importance of the ‘Consciousness of the Justice of the Cause’.⁸²

The Industrial Revolution and codification

During the nineteenth century, the masses became involved in warfare, an enterprise previously reserved to ‘gentlemen’ and enforced through drafts. This popularisation was especially a product of the Napoleonic War (1803-1815) and American Civil War (1861-1865). It led states to seek to create guidelines to preserve chivalry by codifying the rules and regulations of warfare.⁸³ These efforts focused on the *jus in bello*, leaving out the *jus ad bellum*, which remained outside the public realm. The U.S. General Army Orders No. 100, also known as the Lieber’s Code (1863), provided a model for these codification efforts.

Lieber’s Code initiated a series of attempts to codify the law of war. Directly inspired by Lieber’s Code, a number of European jurists sought to create a similar military handbook for European warfare. To this end they convened the 1864 Brussels Conference on the Proposed Rules for Military Warfare. These developments contributed to a movement across Europe to codify the laws of war. This movement was helped off the ground by Henri Dunant, who was instrumental in convening the first Geneva Convention of 1864.⁸⁴

Two key developments had a great impact on codification. First, the technological progress of that era had tremendous effects on the conduct of warfare, greatly increasing

⁷⁹ Grotius, Hugo (1853), ‘The Preliminary Discourse’, XXXVII/LVI-LIX

⁸⁰ *Ibid.*, XXIX

⁸¹ *Ibid.*, XXVII

⁸² *Ibid.*, XXVIII

⁸³ O’Driscoll, Cian (2008), *Renegotiation of the Just War Tradition and the Right to War in the Twenty-First Century*. Hamshire: Palgrave Macmillan. P. 20

⁸⁴ *Ibid.*, 20

its ‘destructive capacity’. Starting the 1860s, a number of new inventions changed the nature of warfare.⁸⁵

New military developments’ began to take place, as ‘[t]he metal-hulled, screw-propelled ship first came into service [...], as did national railroad services across Europe. These inventions revolutionized strategy by increasing the mobility and reach of armies. On the battlefield, the needle-gun, the chassepot, and the machine gun also first appeared around this time.⁸⁶

Second, ‘formal international law’ became more significant in that period.⁸⁷ As a result, in the nineteenth century, war became increasingly regulated. This process allowed for a framework independent of the Christian faith to emerge. This independence, in turn, facilitated the universalisation of the laws of war, which were previously seen as merely applicable to Christendom.⁸⁸

Nevertheless, the main focus of nineteenth century jurists was *jus in bello*. In fact, from Vattel to the end of World War I, ‘there was hardly any meaningful talk about *jus ad bellum*’, the language of which ‘was virtually anathema to international law’. In fact, ‘the terms “just” and “unjust” fail to appear even once in the Geneva Conventions and Hague Regulations.’⁸⁹ This was due to two reasons. First, the development of *jus in bello* was perceived as ‘the best way to limit the destructiveness of war’, while developing the idea of *jus ad bellum* seemed much more difficult. Indeed, in a ‘pluralistic system, [...] it is easier to agree to limit the destructiveness of war when it arrives than it is to forge a consensus on what would constitute a just cause for the resort to war’.⁹⁰ Second, ‘the existence and viability of international law was understood to “depend upon the un-stated assumption that each party is neither more right than wrong in having gone to war in the first place; all laws of war must assume that both parties are equally in the right.”’⁹¹ This assumption, as discussed above, holds its roots in Vitoria’s thinking. The process of codification and ‘the progressive development of international law’ continue to remain a tremendous endeavour and, since the end of

⁸⁵ *Ibid.*, 20

⁸⁶ *Ibid.*

⁸⁷ Rengger, Nicholas (2013), 78

⁸⁸ Previously, ‘international law was seen to apply fully only to European states and their derivatives, and the laws of war to apply only in conflicts between “civilized” peoples.’

Hirst, Paul (2001), 67

⁸⁹ O’Driscoll, Cian (2008), 22

⁹⁰ *Ibid.*, 21

⁹¹ *Ibid.*

World War II, it has become ‘one of the tasks of the United Nations (U.N.), performed mainly by the International Law Commission (ILC).’⁹²

The world at war (1914-18 and 1939-1945)

The First World War’s ‘scale and duration [...] damaged the legitimacy of war as a morally neutral power technique in relations between states’.⁹³ Until then, ‘States were presumed [...] to have a *right* of war in defense of their interests, which therefore made the traditional questions of the *jus ad bellum* irrelevant.’ Therefore, where previously the doctrine of *compétence de guerre* entailed ‘an absolute right of war’, the end of World War I led to ‘state leaders and international lawyers [seeking] more radical solutions in the *jus ad bellum*.’⁹⁴ Hence, ‘[in] the years immediately following World War I, wars of aggression were defined as *ipso facto* illegal, and self-defense was enshrined as the only legitimate cause for lawful resort to war.’⁹⁵

Conversely, ‘the Second World War became a fight for survival between states and ideologies’. War now had unlimited objectives: policy required absolute war and the elimination of the enemy.’ In fact, ‘the logic of war to ascent to the extreme was doubled by the logic of extreme political goals.’⁹⁶ The end of World War II, precipitated by the nuclear bombings of Hiroshima and Nagasaki, shed a new light on the conduct of warfare, as the extent of the damage war could induce was taken to a whole new level. This understanding led the drafters of the U.N. Charter to only take ‘one legal basis for war, that would be self-defense, and that all other recourse to war would be equated with aggression.’⁹⁷ In Walzer’s words: ‘Aggression is remarkable because it is the only crime that states can commit against other states; everything else is, as it were, a misdemeanor.’⁹⁸ Thereby, ‘the distinction between just and unjust wars, de-emphasized by nineteenth century jurists, was reestablished over the course of the twentieth century, only this time it was stated in legal terms.’⁹⁹ This development led to the institutionalisation of ‘the legalistic parlance of the twentieth century’, which led to ‘just wars [being] equated with wars of national defense while wars of aggression became

⁹² Müllerson, Rein (2000), 60

⁹³ Hirst, Paul (2001), 70

⁹⁴ O’Driscoll, Cian (2008), 22-23

⁹⁵ *Ibid.*, 24

⁹⁶ Hirst, Paul (2001), 72

⁹⁷ O’Driscoll, Cian (2008), 25

⁹⁸ Walzer, Michael (2006), 51

⁹⁹ O’Driscoll, Cian (2008), 25

synonymous with unjust wars.’¹⁰⁰ This in turn led to a significant change in the understanding and a narrower scope of *jus ad bellum*. The *jus ad bellum* were ‘constrict[ed] such that fewer just causes would be recognized for going to war’ and ‘formal[ised]’, meaning ‘the right to war was restated in legalistic terms.’¹⁰¹

Governing warfare in the nuclear age

The first half of the twentieth century saw the division of the western world ‘between those who saw war as simply one aspect of state policy among many (in fact very few), those who saw it as anathema under any circumstances (equally few), and those who saw it – when they thought of it at all – as a terrible necessity.’¹⁰² This view translated into the belief that ‘war should only be fought when something considered really valuable is at stake and, given the ideological orientation of the century, that would more often than not translate into fighting war for basic “values”’. In this context, ‘the maxim that necessity knows no law is likely to be omnipresent. In other words, realpolitik wedded to ideology is likely to produce “total” war.’¹⁰³ The latter part of the twentieth century witnessed a departure from this mode of thinking, leading to a more ‘compassionate response’ to war, according to which, ‘war must sometimes be fought, but it must also be possible to fight it justly and well. This is the only way to avoid the excesses of ideological war and of a wholly instrumental realpolitik.’¹⁰⁴

It is thanks to these political and strategic developments that the legal framework governing the conduct of warfare became more elaborate during the twentieth century. But this was also due to the profound shift in the very nature of warfare, as new military technology changed the conduct of hostilities on the battlefield and beyond. The conduct of warfare began to change during the nineteenth century, with the advent of new technologies. But no new technology had the same impact on the conduct of hostilities and the ethical and moral dilemmas surrounding war as the atom bomb. In this sense, ‘nuclear weapons made a fundamental difference to the nature of war because they undermined its rationality. Heretofore, war was a means to an end.’¹⁰⁵ The advent

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Rengger, Nicholas (2013), 52

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Hirst, Paul (2001), 36

of the atomic age entailed a different approach to armed conflict not only in practice, but also on an ethical level.

Nuclear weapons made the rapid escalation to absolute war likely, that is, a generalized exchange in which both the states and societies of the contending powers were destroyed. Nuclear weapons removed the constraints that had limited the destructiveness of war. But, far from reinforcing the offensive, these weapons led to military stalemate. These weapons undermined any possible political objective that their use could serve.¹⁰⁶

The addition of nuclear weapons to the equation not only changed the approach to the conduct of warfare and its legal governance, but also overall political strategy. Indeed, ‘their use would signify that political strategy had failed. In this case the political effects of this innovation in military technology were fairly direct.’¹⁰⁷ Likewise, ‘by holding forth on nuclear deterrence, arms control and East-West diplomacy, analysts could maintain that these were more important issues than the distractions of actual wars going on elsewhere in the world.’¹⁰⁸ The advent of nuclear weapons and the emergence of a new form of warfare, the Cold War, led to a rise in the use of guerrilla warfare. Yet, nuclear war ‘remained the dominant form of war, the one that shaped the core strategies of the most powerful states.’ Nuclear weapons are viewed by some as a stabilising force, which have reduced the likelihood of another devastating conventional war, rendering events like the two World Wars of the twentieth century less possible.¹⁰⁹ However, they have been revealed ineffective in addressing the challenges posed by guerilla warfare, counter-insurgency, and non-state actors. While no global conflict since the end of the Second World War has matched its intensity, the second half of the twentieth century was marked by dirty wars, genocides, and terrorist attacks that these weapons could not prevent.

The Cold War and just deterrence

The advent of the nuclear age and the Cold War challenged many fundamental principles of warfare. Such norms as the distinction between combatants and noncombatants and proportionality could no longer be understood in the same way they were in the context of conventional warfare. To remedy that, some thinkers attempted to

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Smith, M.L.R. (2003), ‘Guerrillas in the mist: reassessing strategy and low intensity warfare. *Review of International Studies*, 29, PP. 19-37. 30

¹⁰⁹ Hist, Paul (2001), 39

rationalise nuclear decision-making within the realm of just war theory. Others went even further by trying to apply just war theory to nuclear weapons. One of these attempts was to propose a model of just deterrence, as deterrence was viewed as the atom bomb's *raison d'être*. Deterrence was also a key component of nuclear and foreign policy during the Cold War. Yet, not only can the idea of a just deterrence be questioned, but also its morality. 'The reason for our acceptance of deterrent strategy, most people would say, is that preparing to kill, even threatening to kill, is not at all the same thing as killing. Indeed it is not, but it is frighteningly close—else deterrence wouldn't "work".' The moral problem with deterrence, Walzer argues, lies 'in the nature of that closeness'.¹¹⁰

Nevertheless, shortly before the end of the Cold War, Malcolm McCall argued that 'the political and military leaders in those nations which possess strategic nuclear weapons have lacked moral guidelines by which to assess their own implementation of nuclear deterrence.'¹¹¹ In an attempt to establish such criteria, applicable to nuclear weapons, McCall proposes a model based on *jus ad bellum* and *jus in bello*, which he qualifies as '*jus ad dissuasionem*' and '*jus in dissuasionem*'. The first, he argues, encompasses 'conditions which concern the rightness of introducing (or maintaining) nuclear deterrence', addressing the 'Why? And When'. The second establishes 'those conditions concerning the way deterrence should be conducted', assessing the 'How?'¹¹² McCall further argues that in order for deterrence, whether nuclear or non-nuclear, to be just, it must meet the 'peace and justice' requirement, of which, the criteria are 'just cause' and 'right intention'. That is defined as a war that is 'permissible only to confront "a real and certain danger"'.¹¹³ Arthur Hockaday, however, argues that McCall is over ambitious in his positing 'peace with justice' and contends that 'it is unreasonable to stipulate that without this very ambitious aim deterrence cannot be characterised as Just.'¹¹⁴ McCall counters arguments presented by Hockaday and others, according to which just deterrence aims to prevent war and notes that the right intention in doing so is key.¹¹⁵ Furthermore, McCall highlights what he perceives as the 'central point' in the discussion, which lies in the fact that 'successful deterrence depends upon

¹¹⁰ Walter, Michael (2006), 270

¹¹¹ McCall, Malcolm, in McCall, Malcolm, and Ramsbotham, Oliver (1990), 9

¹¹² *Ibid.*, 10

¹¹³ *Ibid.*, 11

¹¹⁴ Hockaday, Arthur, in McCall, Malcolm, Ramsbotham, Oliver (1990), 49

¹¹⁵ McCall, Malcolm, in *Ibid.*, 12

mutual perception, so, compared to traditional Just War thinking, there is a fundamental shift of emphasis in Just Deterrence towards mutuality and reciprocity.’¹¹⁶

McCall goes on to apply the ‘cardinal norms’ of international humanitarian law, which hold their roots in the just war tradition, to deterrence. First, he discusses the impact of deterrence-failure and a subsequent nuclear detonation on the idea of proportionality.¹¹⁷ Second, he questions the role of the idea of discrimination (distinction between combatants and noncombatants) in the decision-making, while raising questions regarding the meaning of ‘intentional’ in the targeting of non-military objects. In doing so, he discusses the challenges posed by nuclear weapons to this idea, but rejects some of them by claiming that, ‘all modern warfare tends to be indiscriminate in its effects.’ While such a statement is too broad and not nuanced, the uniqueness of nuclear weapons in this regard has been argued.¹¹⁸

The end of the Cold War marked a new era in warfare, by ‘loosening’ the just war tradition. ‘This loosening amounts to a more favorable disposition toward interventionist politics and represents a reversal of the narrowing and tightening of the *jus ad bellum* that took place over the previous two hundred years.’¹¹⁹ This ‘loosening’, however, could arguably have started after the end of the First Persian Gulf War. According to Walzer, that war was ‘fought in strict accordance with the classic just war paradigm’, as the war was brought to an end ‘once the invasion of Kuwait had been decisively defeated.’¹²⁰

The age of post-modern terrorism

The 9/11 terrorist attacks challenged the notion of just war theory. Much of the narrative U.S. President George W. Bush and U.K. Prime Minister Tony Blair developed to justify the invasion of Iraq in 2003 revolved around the notion of a ‘bona fide just cause for war.’¹²¹ While scholars, analysts, and policymakers later challenged this narrative and the ‘just cause’ presented by Bush and Blair, they led to two developments in the field. First, the debate around the just war tradition, including just cause, just means,

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, 18

¹¹⁸ *Ibid.*, 19

¹¹⁹ O’Driscoll, Cian (2008), 9

¹²⁰ Walzer, Michael (2006), xii

¹²¹ O’Driscoll, Cian (2008), 9

and just ends, was revived and publicised. Second, a new scholarly movement seeking to explain war and its just conduct in the Islamic tradition emerged. The events of 9/11 entailed a number of political, strategic, legal, and ethical changes, which are discussed further in the following sections and Chapter Four.

Kenneth Waltz has suggested that three basic facts about world politics seem remarkably unchanged by 9/11. The first is what he terms the “gross imbalance of power” in the world since the demise of the Soviet Union, namely unchallenged US primacy. The second is the gradual proliferation of nuclear weapons in particular and to some extent weapons of mass destruction in general, a trend certainly made worse by events since 9/11 but firmly in place long before it and, indeed, in many respects a central feature of international politics almost from the beginning of the nuclear era. The third is the permanence and prevalence of crises in the world, crises in which, given its position, the US is almost certain to be involved to some extent, but which are, again a well-known feature of international politics in almost any era.¹²²

Waltz’ claim regarding the gradual proliferation of nuclear weapons is incorrect. Indeed, no new state, except the Democratic People’s Republic of Korea (DPRK), has successfully developed a nuclear capability since Pakistan in the 1990s. Nevertheless, despite the consistency of these three factors, Reggner argues that 9/11 had significantly impacted: ‘claims about the character of the use of force.’ As discussed previously, the end of the Second World War led to ‘the rise of [...] “the compassionate mode” of responses to the problem of war’. This ‘meant that, from the founding of the United Nations onwards, the official rhetoric and (at least arguably) much of the formal practice of international relations was devoted to the idea of the restraint, limitation and even abolition of war.’¹²³ Reggner further contends that this is the ‘ideal that underpinned the foundation’ of the NPT and a ‘central theme in the Cold War’, according to which, ‘a direct confrontation was too horrific and too irrational to contemplate’ given the existence of nuclear weapons.¹²⁴

This trend was disturbed by 9/11, as the nature of warfare changed once again. First, ‘the political space’, existing in the ‘post-Westphalian codes’, which ‘presuppose a political battlefield’ with ‘two states battling it out for a recognised political end’ have arguably ‘hollowed out since 2001.’ Second, as suggested by Christopher Coker, in the context of the ‘War on Terror’, the underlying assumption is that ‘there can be no compromise on Truth’. This further enhances the difficulty of evaluating ‘Islamist

¹²² Rengger, Nicholas (2013), 16

¹²³ *Ibid.*, 18-19

¹²⁴ *Ibid.*, 19

terrorism in pragmatic or politically rational terms', the difference in the understanding of the 'role of human reason in political affairs, and having to compromise on 'everything [...] that Western liberals themselves regard as "scared" as other layers of challenges.'¹²⁵ This also creates another challenge, that of the lack of empathy, and consequently, that of knowledge of the adversary. In other words, many policymakers tend to take for granted that the adversary is irrational and to dismiss its concerns and values. This has been especially the case in the context of the War on Terror, but also in general western foreign policy toward the Muslim world. This also stems from the tendency to group all Muslim populations together as a single, coherent entity, disregarding their specificities and differences, which are further discussed in the case studies. This, in turn, is mainly due to the fact 'our moral codes have traditionally been derived from religious injunctions [...] in the last three hundred years the West has largely derived the laws of war from what philosophers have had to say, not the theologians.' In fact, 'it is philosophy which has carried the burden of the ethical debate'.¹²⁶ Third, the nature of 'our ethical and legal codes have tended to take the Weberian understanding that violence is legitimate only when exercised by the state'. This view 'allowed Clausewitz [...] to conceive war as a duel between states or moral equals.' It assumes that states, like participants in a duel, 'hold certain values in common and are prepared to defend their honour, at times at great risk to themselves. In a duel there is always a winner and a loser, unless one of the parties (or both) agrees to suspend the exchange'.¹²⁷ This understanding of war has been challenged by the emergence of non-state actors in the realm of warfare. Coker argues that these factors underpin the arguments advanced in the western world, according to which the codes governing warfare cannot be applied to the 'War on Terror'. These views hold true that wars are no longer symmetrical 'even when it comes to traditional ideas of what is right or wrong'. What is more, the adversary is composed of individuals or groups that do not abide by 'the etiquettes of war which most states, with only a few exceptions, have chosen to recognise for centuries – if sometimes only in the breach, not the observance'.¹²⁸ Furthermore, not only are the perpetrators of terrorist attacks not

¹²⁵ *Ibid.*, 3-4

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*, 4

¹²⁸ *Ibid.*, 5

combatants¹²⁹ in the traditional sense, they also do not target combatants or even states, but rather entire populations. This is further discussed in Chapters Three and Four. As highlighted by Coker, ‘Al-Qaeda’s *fatwa* of 1998 was issued not against the United States, but the American people.’¹³⁰

Nevertheless, ‘what *is* clearly new in the post-9/11 situation is the *character* of the use of force’. This character stems from al-Qaeda representing “‘a new kind of threat” that departs from earlier kinds of “terrorism” in both its methods and its techniques.’¹³¹ Hence, several arguments can be made. First, with globalisation, ‘this kind of long war must be fought at all levels, not merely in military action but also in financial, legal and ideological terms’. Second, ‘the much-hyped “revolution in military affairs” was – at best – overstated, for the 9/11 bombers did not use high-tech weaponry but turned basic and “everyday” technology against the West’. Third, and most importantly, ‘that the “nuclear taboo” is becoming eroded both by states and by the desire on the part of non-state actors like al-Qaeda to acquire nuclear weapons or at least some form of weapons of mass destruction’.¹³² The causes and consequences of these developments are further assessed in Chapter Four.

As mentioned previously, these events led to the emergence of new discourses in the realm of just war tradition. These are unfolding in an era where ‘strategy, politics and law are changing simultaneously, where, previously, change has been in more sequenced steps.’¹³³ Additionally, since the 1990s, one of the most important developments in warfare lies in the growing role of the media in the scrutiny of the conduct of military operations.

International judicial developments, coupled with advances in communications, have changed the landscape for the future conduct of warfare. This has clearly been the case, from Bosnia to al-Qa’ida terrorists, Afghanistan, Iraq and Libya, and will be wherever else action has to be taken. No future war will be conducted [...] without intense public-particularly media-scrutiny and attention to potential war crimes.¹³⁴

For all these reasons, a re-examination of ‘our understanding of the self-defense needs’ was advocated in light of concerns that ‘that the nexus between transnational terrorism, rogue states, and nuclear proliferation poses a novel threat that requires “new thinking”

¹²⁹ The United States uses the term ‘enemy combatant’ for individuals suspected of being Al-Qaeda affiliates.

¹³⁰ *Ibid.*, 12

¹³¹ Rengger, Nicholas (2013), 21

¹³² *Ibid.*

¹³³ Gow, James (2013), 18

¹³⁴ *Ibid.*, 16

on how best to respond.’¹³⁵ In fact, some argued that if the international community fell short of re-assessing its conventions, it would ‘risk continuing to fight twenty-first century conflicts with twentieth century rules.’¹³⁶ In former British Defence Secretary John Reid’s words:

We owe it to ourselves, to our people, to our forces and to the cause of international order, to constantly reappraise and update the relationship between our underlying values, the legal instruments which apply them to the world of conflict, and the historical circumstances in which they are to be applied, including the nature of that conflict.¹³⁷

These developments led to a shift in the approach to *jus ad bellum*. As noted by Walzer, ‘it is a feature of just war theory in its classic formulations that aggression is regarded as the criminal policy of a government, not as the policy of a criminal government—let alone a criminal system of government’.¹³⁸ This idea was challenged by the interventions in Afghanistan and Iraq, where the goal was to overthrow and replace ‘a criminal government’.¹³⁹

Summary

The previous section offered a brief overview of the developments leading to the establishment of the just war tradition, as we know it today. It discussed the Greco-Roman and Christian roots of the theory and its formation in the bosom of the Church thanks to the contributions of theologians such as Augustine and Aquinas. It highlighted the questions and issues raised by the thinkers of the School of Salamanca and their role in determining the independence of a just cause from just means. It evaluated the evolution of *jus ad bellum* and *jus in bello* throughout the twentieth century. It identified four key events, which challenged and subsequently shaped the tradition and the laws it fashioned in their current form. First, the Industrial Revolution changed the conduct of hostilities on the battlefield. A number of new materials and technologies revolutionarised warfare. Second, the transition of warfare from an enterprise reserved to the elite to one open to all led to the codification of a legal body governing armed conflict. This was undertaken in the context of a broader international legal codification trend. Third, the end of the Second World War marked the beginning of the atomic age,

¹³⁵ O’Driscoll, Cian (2008), 27

¹³⁶ Reid, John (June 2006), ‘21st Century Warfare, 20th Century Rules’. *RUSI Journal*. P. 15

¹³⁷ *Ibid.*, 12

¹³⁸ Walzer, Michael (2006), x

¹³⁹ *Ibid.*, xi

leading to a reevaluation of armed conflict, strategy, and international affairs. Nuclear weapons challenged the traditional understanding of such key notions as the prohibition against the unnecessary suffering of combatants, the distinction between combatants and noncombatants, noncombatant immunity, and proportionality. Finally, the terrorist attacks against the United States on 11 September 2001 and the ‘War of Terror’ stirred the debate around just war tradition and the norms governing warfare.

International law

The following section provides a brief overview of the key general notions of international law, before defining the key norms of the law of international armed conflict or international humanitarian law. The section serves to offer the legal tools to better comprehend the international legal context of each case study, while providing a general comparative framework for the Islamic legal discussion in the next chapter.

Notions

Jus cogens

One of the key concepts in international law is that of *jus cogens*, which is defined in the 1969 Vienna Convention as

A peremptory norm of general international law accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.¹⁴⁰

The International Criminal Tribunal for Yugoslavia (ICTY) in its 1998 decision in *Prosecutor v. Furundžija* noted that:

One of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction.¹⁴¹

Consequently, States have universal jurisdiction over breaches of *jus cogens* norms. While the question of which norms of international law fall under it is rather

¹⁴⁰ ‘Vienna Convention’ (1969), Article 53

¹⁴¹ *Prosecutor v. Furundžija* (1998), para. 156

controversial, some issues have been clearly classified as *jus cogens* by the jurisprudence.

Pacta sunt servanda

In order for the international legal system to function as designed, agreements need to be implemented in good faith. This prerequisite is formulated as *pacta sunt servanda*. The international framework, unlike domestic ones, lacks an enforcement mechanism. It is crucial to pinpoint that some member states are complicit in keeping the system weak, so as not to threaten their national sovereignty and interests. The Security Council Permanent Five members, composed of China, France, Russia, the United Kingdom, and the United States (P5), are often among the states aiming to maintain the *status quo*, at times at the expense of international system. What is more, international treaties, even unwritten ones, are binding. Members of the international community, among which are a number of Muslim states, do not always respect this idea. These states tend to sign and ratify international legal instruments, but fail to implement them nationally as they contain provisions which they see as incompatible with Islamic law. This has especially been the case with international human rights legal instruments.

Sources

The sources of international law are enumerated in Article 38 of the *Statute* of the ICJ as follows:

- a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. International custom, as evidence of a general practice accepted as law;
- c. The general principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.¹⁴²

Customary international law comes into being through the ‘evidence of a general practice accepted as law’. This second component of customary international law is known as *opinio juris sive necessitatis*. *Opinio juris* was described as ‘a belief that this

¹⁴² *Statute* of the International Court of Justice (1945)

practice is rendered obligatory by the existence of a rule of law requiring it' by the ICJ in the *North Sea Continental Shelf* case.¹⁴³

Jus ad bellum and jus in bello

As mentioned in the previous sections, the laws of war are traditionally divided into two main components: *jus ad bellum* and *jus in bello*. The former is a framework 'governing the legality of war', while the second draws the limitations to the means and methods of warfare.¹⁴⁴ Both aggressor and aggressed, in breach of *jus ad bellum* can be found in breach of *jus in bello*.¹⁴⁵ *Jus in bello* or law of international armed conflict provides the contemporary framework governing the conduct of hostilities. Laws of international armed conflict can be defined as a system of checks-and-balances system, 'intended to minimize human suffering without undermining the effectiveness of military operations'.¹⁴⁶ As stated in Article 35 (1) of the 1977 Protocol Additional to the Geneva Conventions (AP I), 'In any armed conflict, the right of the Parties to the convention to choose methods or means of warfare is not unlimited.'¹⁴⁷

Since the end of the Second World War, post conflict strategies, such as peacebuilding, have become increasingly important, leading some scholars to add a third category to the existing two: *jus post bellum*. This, however, has yet to gain the same prominence in the legal sphere as the political one and is beyond the scope of this thesis. Indeed, the idea of post conflict responsibility is rather new in the international legal arena, thus not quite established internationally and non-existent in the Islamic framework. The following sections discuss at the two traditional areas of the laws of war, *jus ad bellum* and *jus in bello*.

Jus ad bellum

The U.N. Charter is one of the few key international legal instruments regulating *jus ad bellum*. Article 39 of Charter provides that the UNSC is responsible for determining and regulating when it is legal for a country to initiate an armed conflict.

¹⁴³ *North Sea Continental cases*, ICJ Rep. 3, 44 (1969)

¹⁴⁴ Dinsein, Yoram (2010), *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge: Cambridge University Press. P. 3

¹⁴⁵ Dinsein, Yoram (1996), *Crimes Against Humanity*. Tel Aviv: Brill Academic Pub. P. 2

¹⁴⁶ *Ibid.*, 5

¹⁴⁷ Geneva Conventions: Additional Protocol I (1977), Article 35 (1)

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.¹⁴⁸

Aggression is defined as ‘the use of armed force by a State against the sovereignty, territorial or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations’. It is a crime against peace.¹⁴⁹ Yet, the Security Council’s ability and willingness to denounce wars of aggression and its legitimacy as an institution safeguarding international peace and security have been questioned a number of times. Some argue that this is due to the fact that the institution is a product of the post-World War II era and has failed to reflect the strategic and political realities of the modern world. What is more, the UNSC has often served as a vehicle to safeguard the political interests of the P5. For these reasons, a number of critics, including the Non-Aligned Movement (NAM), have called for the body to be reformed.¹⁵⁰ As discussed further in Chapter Six, this has been the case of Tehran, where the failure of the Security Council to effectively condemn Iraq’s act of aggression and its use of chemical weapons against Iran has left a lasting mark. What is more, the role of the divine mandate was theoretically downplayed in just war thinking during the Renaissance. Yet, the Security Council served as a vehicle for the reintroduction of the notion of the divine mandate following 9/11.

[Vitoria] argued against the divine mandate on the grounds that there was no precedent and no direct proof that God had in fact commanded particular wars. Vitoria left open the possibility that God could theoretically issue a mandate for war but insisted that those claiming such a mandate provide evidence of its existence.¹⁵¹

Jus in bello

In 1964, a conference held in Geneva initiated the drafting of the first Geneva Convention (GC). The International Committee of the Red Cross (ICRC), a non-governmental organisation overseeing the implementation of the convention, was thus created.¹⁵²

¹⁴⁸ Charter of the UN (1945)

¹⁴⁹ Green, Leslie C. (2008), *The Contemporary Law of Armed Conflict*. Manchester: University of Manchester Press. P. 76

¹⁵⁰ McDonald, Kara. Patrick, Stewart (2010), ‘UN Security Council Enlargement and U.S. Interests’, Council Special Report No. 59, December 2010. Council on Foreign Relations. P. vii
‘NAM calls for reforms in UN Security Council decision-making mechanism’, PressTV, 27-11-2012.

¹⁵¹ Bellamy, Alex. (2008), *Fighting Terror: Ethical Dilemmas*. New York: Zed Books Ltd. P. 48

¹⁵² ICRC (1998)

In this respect, international humanitarian law has a similar purpose as the laws of war revealed to the Muslim prophet, Muhammad. Indeed, Muhammad's mandate was to reform the pre-Islamic practices and laws of Arab tribes. Muhammad's reforms did not translate into the complete removal of the previous era's culture and merely changed those practices viewed as the most 'unethical'.¹⁵³ Likewise, the proposed reforms concerning the laws of war in the west were for the most out-dated practices. However, the system was not merely a reformation but rather a codification of all existing and new laws. This codification held its roots in the *Deuteronomy*,¹⁵⁴ which already codified the laws of war millennia before modern international humanitarian law coming into being.

Latter steps taken by the Hague Conventions (1899 and 1907) to outlaw armed conflict and limit armaments were too idealistic. However, despite their failure to outlaw war, the Hague Conventions did have an impact on laws of international armed conflict and on international law in general.¹⁵⁵ This is illustrated by the U.N. Charter's avoidance of the use of the term 'war', in an effort to use a positive terminology. Nevertheless, in the century to follow, all new technologies were used as means of warfare.

Principles of international humanitarian law

The two traditional cardinal principles of international humanitarian law are that of the distinction between civilians and combatants and that of the avoidance of unnecessary suffering to combatants.¹⁵⁶ As highlighted by Israeli scholar of laws of war, Yoram Dinstein, the ICJ in its 1996 Advisory Opinion on *Nuclear Weapons* found these two principles to be 'intransgressible' under customary international law.¹⁵⁷ In fact, 'the adjective "intransgressible" seems to imply that no circumstances would justify any deviation "from the principle"'.¹⁵⁸ Similar notions exist in Islamic law and are discussed

¹⁵³ Watt, Montgomery (1956), *Muhammad at Medina*. Oxford: Oxford University Press. P. 262

¹⁵⁴ The *Deuteronomy* is one of three Hebrew codes. The two others are the *Exodus* and *Leviticus*. According to Walzer, the *Deuteronomy* is 'ideological' and the 'crown of Israel's law'.

Walzer, Michael (2013), *In God's Shadow – Politics in the Hebrew Bible*. New Haven: Yale University Press. P. 18-20.

¹⁵⁵ 'Hague Convention', *Encyclopaedia Britannica. Encyclopaedia Britannica Online Academic Edition*. Encyclopaedia Britannica Inc., 2014. Web 23 May 2014.

¹⁵⁶ Dinstein, Yoram (2010), 8

¹⁵⁷ International Court of Justice. Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (1996).

¹⁵⁸ *Ibid*.

further in Chapter Three.¹⁵⁹ These international norms are further assessed in this section.

Distinction

As stated by Leslie Green, ‘one of the oldest rules of the law of war provides for the protection of the civilian noncombatant population and forbids making civilians the direct object of attack.’¹⁶⁰ Article 51(4) of AP I prohibits indiscriminate attacks, defining them as:

Those which are not directed at a specific military objective;

Those which employ a method or means of combat which cannot be directed at a specific military objective; or

Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

The only exception to this rule is the killing of civilians as collateral damage, which must meet certain conditions to be just.

Unnecessary suffering

The notion of unnecessary suffering is at the heart of the prohibition on a number of weapons in international law. As discussed further in the next sections, this is the case of Dum-Dum bullets, which expand in the victim’s body, as well as chemical and biological weapons. Article 23 (e) of The Hague Convention IV prohibits the use of ‘arms, projectiles, or material calculated to cause unnecessary suffering.’ Seventy years later, Article 35(2) of AP I confirmed this idea: ‘It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.’

Neutrality

¹⁵⁹ Obligatory or *wājib*.

¹⁶⁰ Green, Leslie (2008), 256

A third key principle identified by the ICJ in its Advisory Opinion on *Nuclear Weapons* is that of neutrality.¹⁶¹ Wartime neutrality is ‘the legal status arising from the abstention of a state from all participation in a war between other states, the maintenance of an attitude of impartiality toward the belligerents, and the recognition of this abstention and impartiality.’¹⁶² Its ‘modern [...] conception had its birth in conflicts upon the sea, the common heritage of all nations and the exclusive possession of none.’¹⁶³ Since, the notion has evolved. Grotius argues that, ‘the right of passage through neutral territory could, if denied, be taken by force’. Vattel, however, contends that, ‘it is a violation of sovereignty to enter territory without the consent of the sovereign, except in case of extreme necessity’. He defines such a case as one in which ‘an army, to avoid destruction, may force its way, “sword in hand,” through neutral territory’.¹⁶⁴ Nevertheless, the law was mainly developed in the nineteenth century but lost much of its importance in the latter half of the twentieth century.¹⁶⁵ According to the law, as defined by Articles 1 and 2 of the Hague Conventions, the neutrality of states is to be respected during armed conflicts and neutral states cannot to be invaded or used for the deployment of forces. Article 1 of the Hague Convention V reads: ‘the territory of neutral Powers is inviolable.’

Proportionality

The notion of proportionality is also key in the discussions around the use of weapons of mass destruction, and nuclear weapons in particular. Current customary law of international armed conflict definitely confirms the precept that an attack against military objectives expected to cause disproportionate collateral damage to civilians or civilian objects, in relation to the military advantage anticipated, is unlawful.¹⁶⁶ However, regardless of the quasi-consensus around the need for damage inflicted by warfare to be proportional to the anticipated military advantage, and despite nuclear

¹⁶¹ ICJ Advisory Opinion on *Nuclear Weapons* (1996), para. 88-89

¹⁶² “Neutrality”, *Encyclopaedia Britannica. Encyclopaedia Britannica Online Academic Edition*. Encyclopaedia Britannica Inc., 2014. Web 23 May 2014.

¹⁶³ Hill, David (1902), ‘The conception and realization of neutrality’, A paper read before the American Social Science Association at Washington on April 23, 1902. P. 6

¹⁶⁴ *Ibid.*, 8

¹⁶⁵ Schindler, Dietrich. Toman, Jiri (1988), *The Laws of Armed Conflicts*. Leiden: Martinus Nijhoff Publishers. PP. 942-947

¹⁶⁶ Dinstein, Yoram (2010), 129

weapons not being in accordance with this norm, they have not been banned on these grounds.

Protection of Civilians

Articles 48 and 52 (1) of AP I prohibit the ‘direct and deliberate’ targeting of civilians and civilian objects. Article 52 (2) further prohibits ‘acts or threats of violence the primary purpose of which is to spread terror among the civilian population’, classifying such attacks as war crimes under Article 8 of the Statute of the International Criminal Court (ICC). Such means and methods are prohibited under international law regardless of their success or failure.

Traditionally, all able-bodied adult men were considered as combatants and only women and children were automatically considered for civilian immunity. Chapter Three discusses the notion of civilian immunity in the Islamic tradition and notes that this rule is also valid in the Islamic system. Walzer identifies the ‘first attempt’ to ‘regulate the wartime treatment of women’ as a passage in the Book of *Deuteronomy*, providing that:

When thou goest forth to battle against thine enemies, and the Lord thy god deliverest them into thy hands, and though carriest them away captive, and seest among the captives a woman of goodly form, and thou hast a desire unto her, and wouldst take her to thee to wife; then thou shalt bring her home to thy house ... and she shall ... bewail her father and mother a full month; and after that thou mayest go in unto her, and be her husband, and she shall be thy wife. And ... if thou have no delight in her, then thou shalt let her go whither she will; but thou shalt not sell her ... for money, thou shalt not deal with her as a slave...¹⁶⁷

Protection of Combatants

The law of international armed conflict protects combatants from punishment for participating in the hostilities. Combatants retiring or becoming *hors de combat*, either by surrendering or being wounded, sick or shipwrecked, are also protected. They have certain rights under international humanitarian law.

¹⁶⁷ Walzer, Michael (2006), 134-135

This statement is in contradiction with the claims made by some prominent Muslim scholars according to which the Islamic tradition is the first source of what we know today as international humanitarian law (Mohaghegh Damad, Mostafa (2000), *Barressi-e Tatbighi-e Hoghoogh-e Jang va Hoghoogh-e Bashardoostane dar Eslam va Hoghoogh-e Beynolmellal*. Tehran: Markaz-e Nashr-e Oloome Eslami. P. 157). Given the fact that the *Deuteronomy* clearly predates Islam, such conclusions are false and prove a lack of knowledge of the Judeo-Christian traditions and the sources and history of international law by said scholars.

Weaponry

A weapon can be defined as ‘an offensive capability that can be applied to a military object or enemy combatant.’¹⁶⁸ The cardinal principles of international humanitarian law enumerated above determine whether a given weapon is legal under international law. However, some weapons fall into a grey area; this is especially the case for nuclear weapons. Technology typically progresses faster than legal precepts, thus leaving a void in the international law of armed conflict. Hence, if the explicit prohibition or authorisation of a given weapon or a class of weapons is not found under existing instruments of international humanitarian law, it must be sought in its general principles. The ICJ used this method to determine whether nuclear weapons are legal or prohibited by international law. Article 36 of AP I reads:

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

Article 8 (2) (b) of the Rome Statute prohibits the use of several classes of weapons in international and non-international armed conflict. Their use is considered a war crime. These include: poison or poisoned weapons, asphyxiating, poisonous or other gases and all analogous liquids, materials and devices, expandable bullets, and more generally, all weapons which are inherently indiscriminate or of a nature to cause superfluous injury or unnecessary suffering. Expanding bullets, otherwise known as Dum-Dum bullets, are prohibited under the Hague IV Declaration III Concerning the Prohibition of the Use of Expanding Bullets (1899) as they cause unnecessary pain and suffering. Likewise, the Ottawa Treaty (1997) bans anti-personnel mines.

Summary

This section provided an overview of the general principles and sources of international law, before applying them to the international law of armed conflict. It then discussed *jus ad bellum* and *jus in bello* in more detail, elaborating on the cardinal norms of international humanitarian law. The next section builds on the discussions of this

¹⁶⁸ McClelland, Justin (2003), ‘The review of weapons in accordance with Article 36 of Additional Protocol I’. *International Review of the Red Cross*. Vol. 85, N. 850, June 2003. P. 404

chapter thus far to offer a survey of the different international instruments in place to govern nuclear weapons.

Contemporary international legal instruments governing nuclear weapons

This section builds on the terms and notions defined previously to offer an overview of the various international legal instruments, which govern the test, production, possession, stockpiling, threat, and/or use of nuclear weapons.

The atom bomb is the only WMD not currently prohibited by a universal international treaty. The other two, chemical and biological weapons, are governed by universal legal instruments. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) respectively entered into force in 1975 and 1997. However, while the prohibition on chemical weapons is total, that of biological weapons is more limited. Unlike the CWC, the BWC does not include a comprehensive set of verification provisions. While there have been debates regarding the potential development of a similar legal instrument for nuclear weapons, a Nuclear Weapons Convention (NWC) has not yet materialised into something practical.¹⁶⁹ A NWC would be modelled after the two above conventions and the Ottawa Treaty. It would prohibit the development, acquisition, stockpiling, threat, and use of nuclear weapons, and eventually eliminate existing stockpiles.

The Nuclear Non-Proliferation Treaty (NPT)

The NPT (1968) is considered as the cornerstone of the international non-proliferation regime. It recognises five Nuclear Weapon States (NWS), the permanent five members of the UNSC. All other states signed up as Non-Nuclear Weapon States (NNWS). While Iran has signed and ratified the Treaty, Pakistan has not, along with India and Israel. The DPRK was a Non-Nuclear Weapon State party to the NPT but withdrew in 2003. It constitutes, thus far, the only case of NPT withdrawal.¹⁷⁰ The DPRK, India,

¹⁶⁹ 'Proposed Nuclear Weapons Convention (NWC).' The Nuclear Threat Initiative.

¹⁷⁰ NPT Article X provides the right to states to withdraw from it if 'extraordinary events, related to the subject matter of the Treaty', have 'jeopardized' its 'supreme interests'.

Israel, and Pakistan are *de facto* nuclear-armed states, although Israel has not politically declared its widely suspected capability.

The NPT has three ‘pillars’: non-proliferation, disarmament, and the right to the peaceful use of nuclear energy. Under the Treaty, NWS must refrain from transferring nuclear weapons or providing assistance for the development of such weapons to Non Nuclear Weapon States. Likewise, the latter are obliged to refrain from ‘horizontal’ proliferation or acquiring such weapons. For their part, the NWS agree to refrain from ‘vertical’ proliferation or the increase in number and quality of nuclear weapons.¹⁷¹ However, the NPT includes a commitment for NNWS to receive assistance in developing nuclear programmes for civilian use. This is guaranteed by Article IV, which states that, ‘nothing in this Treaty shall be interpreted as affecting the inalienable right of all Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II.’ The NPT is, therefore, inherently discriminatory and all signatories have accepted this ‘Grand Bargain’.¹⁷²

NNWS are offered a set of negative and positive assurances. These assurances were adopted as United Nations Security Council Resolutions (UNSCR), with negative assurances being provided by UNSCR 984 (1995) and positive ones by UNSCR 225 (1968). The former includes commitments not to use or threaten to use nuclear weapons against NNWS, while the second includes coming to the aid of NNWS if threatened with nuclear weapons or subject to their use.

Lastly, while some states have made political commitments regarding ‘no first use’ (NFU), these remain merely political and not legally binding.¹⁷³ Hence, states can change their positions without any legal implications, albeit at a political cost. In fact, while no state has yet reversed its NFU policy in practice, there is a historical precedent for a state reversing its policy rhetorically. This was the case of the Soviet Union’s succeeding state, the Russian Federation in 1993.¹⁷⁴

¹⁷¹ Epstein, William, in Burns, Richard (1993), *Encyclopedia of Arms Control and Disarmament*. Vol. II. New York: Charles Scribner’s Sons. P. 857

¹⁷² *Ibid.*, 858-859

¹⁷³ Ullman, Richard. ‘No First Use of Nuclear Weapons.’ *Foreign Affairs*. July 1972.

¹⁷⁴ Schmemmann, Serge (1993). “Russia Drops Pledge of No First Use of Atom Arms”. *The New York Times*.

The International Atomic Energy Agency (IAEA) is the international verification body charged with policing non-nuclear weapon states' commitments not to divert nuclear material from peaceful to military applications. NNWS sign safeguards agreements with the IAEA to provide it with the authority to verify peaceful uses.

The Comprehensive Nuclear-Test Ban Treaty (CTBT)

The CTBT, which opened for signature in 1996 at the United Nations General Assembly (UNGA), bans nuclear testing. Prior to the CTBT, the United States, the United Kingdom, and the Soviet Union signed a Partial Test Ban Treaty (PTBT) in 1993. The CTBT provides for the Comprehensive Nuclear-Test Ban Treaty Organisation (CTBTO), responsible for operating a global verification regime, the International Monitoring System (IMS). The Organisation is further responsible for the implementation of and compliance with the provisions of the treaty. In order for the treaty to come into force, all thirty-five states with a nuclear reactor on their territory must sign and ratify it. Eight countries are yet to do so. Three majority Muslim states - Egypt, Iran, and Pakistan - are among them, as well as China, India, Israel, the DPRK, and the United States. Therefore, the treaty is not yet in force, but has nonetheless been successful in establishing a *de facto* norm against testing. Besides the three tests conducted by the DPRK in the past decade, the last tests were conducted by Pakistan and India in 1998. The last NWS to conduct a nuclear test were China and France in 1996.¹⁷⁵

The 1996 International Court of Justice Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons

The 1996 International Court of Justice *Advisory Opinion* assesses the legality of the threat and use of nuclear weapons. The *Advisory Opinion* was first requested by the World Health Organisation (WHO), but was dismissed by the ICJ, on the grounds that the case was outside its competence. The case was accepted when it was brought before the Court by the UNGA. The Court held that the threat of nuclear weapons occurs more in the context of a policy of nuclear deterrence than the actual use thereof, as the weapons had only been used twice in the context of an armed conflict – in Hiroshima

¹⁷⁵ 'Nuclear Testing 1945 – Today'. CTBTO.org.

and Nagasaki by the United States in 1945. Hence, the Court concluded that *jus in bello* is not applicable to nuclear weapons, since threats do not amount to a state of armed conflict. It did, however, rule that *jus ad bellum* is applicable (Art. 2.4). The Court criticised the very formulation of the question presented to it: ‘is the threat of the use of nuclear weapons permitted in any circumstance under international law’.¹⁷⁶ The ICJ further rejected the ‘Lotus principle’, according to which, that which is not prohibited is allowed. In an attempt to provide the UNGA with an answer regarding the legality or prohibition of nuclear weapons under international law, the Court first assessed existing international instruments and customary law.

Universal international treaties

The ICJ noted that there are no specific provisions prohibiting or allowing the use of nuclear weapons. It also highlighted the absence of universal instruments governing the threat and use of these weapons, and the existence of regional ones. These regional instruments are the Nuclear Weapon-Free Zones (NWFZ). Currently, the entire southern hemisphere is covered by a number of NWFZ: Latin America and the Caribbean (Treaty of Tlatelolco), South Pacific (Treaty of Rarotonga), South East Asia (Treaty of Bangkok), Central Asia (Treaty of Semey), and Africa (Treaty of Pelindaba), as well as Mongolia (Mongolian Nuclear-Weapons-Free Status). The establishment of a NWFZ in the Middle East was proposed by Iran in 1974 and backed by Egypt. The idea has since evolved into that of a Middle East Free of Nuclear Weapons and All Other Weapons of Mass Destruction (WMDFZ) to accommodate the specific needs of the region. However, despite official support from regional states, the WMDFZ has not yet materialised.

Some of the ICJ judges argued that the provision on poisonous gases (1929/1972) was applicable to nuclear weapons. Yet, the Court ultimately concluded that the provision was not applicable. Likewise, the NPT was judged not to address the use of nuclear weapons, but only the legality of possession.¹⁷⁷

Customary international law

¹⁷⁶ International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996)

¹⁷⁷ *Ibid.*

The justices noted the principles of international humanitarian law, but concluded that no customary law prohibits or allows the use of nuclear weapons. According to the Court, UNGA Resolutions do not amount to customary law and a lack of state practice has prevented the formation of a custom. Instead, the Court argued that the formation of the principle of ‘no use’ has not been due to a consensus around the prohibition of nuclear weapons, but because the use of such weapons has not been necessary.¹⁷⁸

Other instruments and provisions

The ICJ reviewed the different provisions and international legal instruments governing issues affected by the potential use of nuclear weapons. These included *lex specialis* (international humanitarian law), *jus ad bellum*, international human rights law (in particular 1966 International Covenant on Civil and Political Rights (ICCPR) Article 6 on the right to life),¹⁷⁹ international environmental law,¹⁸⁰ international criminal law (especially norms addressing genocide),¹⁸¹ as well as the case of *Shimoda v. Japan* (1955).¹⁸² The Court did not find any of the legal instruments and provisions it examined to prohibit the use of nuclear weapons.

Cardinal rules of international humanitarian law

The Court maintained that the use of nuclear weapons is ‘generally contrary to the rules of international law applicable to armed conflict’, especially the two cardinal principles of distinction and unnecessary suffering. This entails the consideration of whether the

¹⁷⁸ International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996)

¹⁷⁹ Article 6 of the ICCPR provides that ‘every human being has the inherent right to life. This shall be protected by law. No one shall be arbitrarily deprived of his life’. The term ‘arbitrarily’ limits the scope of the provision, as it merely applies to the intentional targeting of civilians, for instance.

¹⁸⁰ According to the Court, while international environmental law applies to armed conflict, it is not intended to deprive a state of its right to self-defence. Therefore, while states should take the environment into consideration in their military decisions, environmental treaties and customs do not prohibit nuclear weapons as such.

¹⁸¹ The Genocide Convention (1948) provides that ‘any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (...)’. This provision highlights the requirement of an element of ‘intent’, which a nuclear attack in the context of an armed conflict would not necessarily have.

¹⁸² The case was brought before domestic courts in Japan by a Japanese citizen, victim of the U.S. nuclear attacks during World War II. The plaintiff accused the Japanese state of signing a peace agreement with the United States providing that Japan would not be able to claim compensation for attacks on Hiroshima and Nagasaki.

use of such weapons causes unnecessary suffering to combatants, fails to discriminate between civilians and combatants, causes excessive civilian losses with respect to the military advantage anticipated, or causes excessive damage to neutral states.¹⁸³

International Convention on the Suppression of Acts of Nuclear Terrorism (2005)

Another example of an international legal instrument addressing the issue of the use of nuclear weapons can be found in the International Convention on the Suppression of Acts of Nuclear Terrorism. However, the scope of the Convention is limited to the use of such weapons by non-state terrorist actors. As such, the Convention does ‘not apply where the offence is committed within a single state, the alleged offender and victims are nationals of that State’ (Art. 3), nor are ‘activities of armed forces during an armed conflict’ (Art. 4.1) governed by it. Additionally, the ‘Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by states.’ (Art. 4.4). The scope of application of the Convention is therefore limited to international nuclear terrorism, as defined by Article 2.

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

Conclusion

The current international legal framework regulating nuclear weapons is relatively limited in scope. These weapons remain the only category of WMD not prohibited, partially or entirely, by a single, universal treaty. These limitations stem from the lack of an international consensus to further develop and implement additional instruments

¹⁸³ International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), Para. 2 (e)

to restrict nuclear weapons. Pakistan, for instance, has consistently blocked the proposed Fissile Material Cut-Off Treaty (FMCT), which would prohibit the production of more fissile material. While since beginning of the twenty first century, a number of states and leaders, including U.S. President Barack Obama,¹⁸⁴ have called for a more active global nuclear arms control and disarmament policy, the current political landscape does not seem to hint at a major shift in the current trend. In fact, the Russian annexation of Crimea in eastern Ukraine has raised several questions. First, Kiev gave up the nuclear weapons and materials on its territory and joined the NPT as a NNWS in 1994. In the Budapest Memorandums, the United States, the United Kingdom, and Russia ‘reaffirm[ed]’ their ‘obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine.’¹⁸⁵ Many argue that Ukraine should not have given up the nuclear weapons on its territory and that it should acquire such weapons again. This raises questions for the future of non-proliferation from the perspective of nuclear newcomers.¹⁸⁶ Second, since the annexation, relations between Moscow and Washington have worsened. This development has complicated arms control and nuclear cooperation and impacted the prospect of future steps toward nuclear disarmament.¹⁸⁷

The following chapter shows that Islamic law, despite having a comprehensive set of norms governing the conduct of warfare, does not provide for the careful regulation of weaponry. This is in contrast to international humanitarian law, of which a ‘core rule’ is that the means and methods of warfare must be limited.

Parties to an armed conflict do not have an unlimited choice of methods and means of warfare. All weapons must be used – and indeed must be capable of being used – in accordance with international humanitarian law’s general limitations on the conduct of hostilities, notably the rules aimed at protecting civilians from direct or indiscriminate attacks and otherwise sparing them as far as possible the effects of the hostilities, and the rules aimed at protecting combatants from superfluous injury or unnecessary suffering. In fact, all new weapons require assessment and legal review before they are developed, acquired and introduced by the military to ensure that they are compatible with these core rules and thus to prevent the use of weapons that would violate international law.¹⁸⁸

Islam does not govern the development and use of all weapons. Instead, the faith provides general principles similar to the cardinal norms of international humanitarian

¹⁸⁴ ‘Obama promotes nuclear-free world’. BBC. 05-04-2009.

¹⁸⁵ Budapest Memorandums on Security Assurances, 1994. Council on Foreign Relations. 5-12-1994.

¹⁸⁶ Kinstler, Linda, ‘Crimean Tatar leader: Ukraine needs to go nuclear again’, *New Republic*. 2-05-2014.

¹⁸⁷ Perkovich, George. ‘Nuclear zero after Crimea’. *The National Interst.* 5-05-2014.

¹⁸⁸ Davison, Neil. ‘How international law adapts to new weapons and technologies of warfare.’ InterCross. 04-12-2012.

law, which dictate whether various means and methods of warfare are legal or prohibited. This shortcoming has become visible in the past three decades, as a number of views regarding the legal status of chemical and nuclear weapons under Islamic law have manifested themselves in the international arena.

Chapter Three: The legality of nuclear weapons: Islamic law

An introduction to Islamic legal reasoning

While the international legal framework governing nuclear weapons has been thoroughly examined by academics, policymakers, and lawyers alike, the Islamic framework has never been subject to a comprehensive examination. This chapter attempts to make an original and distinctive contribution to knowledge and understanding by providing a thorough overview of Islamic jurisprudence and its applicability to the nuclear issue. To do so, this chapter first offers a background section, which will discuss the evolution of the Islamic faith and its approach to warfare. It then surveys the different Islamic legal sources and highlights the different concepts and excerpts that can be viewed as relevant to the nuclear debate.

This chapter seeks to address the following questions. How has Islamic law historically governed armament? Does it address the development, procurement, stockpiling, threat, and use of indiscriminate weapons, and particularly, nuclear weapons? Where do different Muslim authorities stand on the topic? It argues that while the acquisition and stockpiling of nuclear weapons can be viewed as allowed and even encouraged by Islamic law, their use can only be justified under certain exceptional circumstances. The notion of the threat of using nuclear weapons remains a gray area in Islamic law and cannot be addressed with the tools provided by the faith. Hence, as discussed in the following chapters, various actors use this gray area to justify their divergent positions on deterrence and the use of nuclear weapons.

It is important to note that this thesis does not attempt to interpret the laws but merely to provide the reader with an understanding of the Islamic legal framework and the arguments and interpretations generally presented by scholars and analysts in the legal debate around nuclear weapons. Furthermore, the aim of this thesis is not to provide a conclusive response to decade-long debates regarding the Islamic position on violence and warfare. Indeed, ‘some political doctrines’, including those stemming from religions, ‘predispose their adherents to the use of violence’. This has been argued in the case of Islam, increasingly so since the 1970s, with a peak reached after the events of 9/11. ‘Since religious traditions are extraordinarily inclusive in encompassing and

justifying quite varied human behavior [...] it is unlikely that such a debate about Islam will be quickly resolved.’¹

This chapter first provides a brief comparative analysis of the Islamic and international legal systems, before offering a conceptual overview of the *shari’a*. It then briefly discusses the place of *jihad* in Islamic philosophy and law. After setting out the foundations of the Islamic ethical, philosophical, and legal approaches to war, the chapter defines and examines the three agreed-upon and major sources of Islamic law (the *Qur’an*, *ahādīth*, and *ijma’*) and the minor sources, including *ijtihād* and *‘aql*, as well as other relevant notions.

***Shari’a*: the path**

As noted in the previous chapter, international humanitarian law has been developed to govern all aspects of warfare, including weaponry. However, nuclear weapons are yet to be regulated by a single international legal instrument. Across the Muslim world, various political and religious authorities, as well as jihadists, claim that Islamic law governs nuclear weapons. Yet, they do not seem to have reached a consensus regarding the legal status of these weapons. Hence, while some see Islam as an enabler, allowing the use of nuclear weapons, others see it as prohibiting them. Accordingly, two different and opposing stances on the acquisition of nuclear weapons have emerged in the Muslim world in the past few decades. The first one, championed by Al-Qaeda and, on a different level and indirectly, Pakistan, which considers the acquisition, threat, and use of these weapons as legal under Islamic law. The second, and official Iranian, position considers them to be prohibited by *shari’a*, on one level or another.

The Islamic legal discourse around nuclear weapons has gained more attention in the west. This has especially been the case since the intensification of the disagreements between the west and Iran over its nuclear dossier and the promotion of the nuclear *fatwā* by Tehran as evidence of the peaceful nature of its nuclear endeavours.² The Islamic discourse has either been completely dismissed as irrelevant³ or hailed as all-

¹ Esposito, John (1997), *Political Islam – Revolution, Radicalism, or Reform?* Boulder: Lynne Rienner Publishers. P. 17

² Ansari, Ali, ‘To be or not to be: Facts and Fiction in the nuclear fatwa debate’, RUSI Analysis, 25-02-2014.

³ Eisenstadt, Michael. Khalaji, Mehdi (2011). ‘Nuclear Fatwa – Religion and politics in Iran’s proliferation strategy’. The Washington Institute for Near East Policy, Policy Focus #115. 24

important⁴ in policy and academic circles, both in the west and throughout the Muslim world. Regardless of the views on the existence and authority of the *fatwā*, the Obama administration has decided to recognise it and interpret it as a confidence-building measure,⁵ albeit with scepticism. In Gary Samore's words: 'I hoped the *fatwā* would give Iran a face-saving reason to accept limits on its nuclear programme but I never believed the substance of the *fatwā* had any bearing on Iran's desire for nuclear weapons.'⁶ Nevertheless, the legal debate itself and the understanding of the scope of its policy implications continue to remain embryonic. What is more, the legal debate is sometimes misguided. This can be explained in light of the increasing Islamophobia displayed in the west and the effort of scholars to distance themselves from it.⁷ Hence, in an attempt to remain within the boundaries of political correctness, some scholarly and analytical pieces shape the debate with erroneous data. The *Qur'an*, they argue, 'limits the legitimate grounds for jihad to defensive actions' and 'the destruction of combatants.'⁸ As this chapter argues, such claims are incorrect and do not provide accurate basis for an informed discussion.

As mentioned previously, since 9/11 and the subsequent increase of interest in the role of *jihad* in the Islamic tradition and faith, a lot of attention has been paid to the norms governing the conduct of warfare in Islam. Likewise, the utilisation of the faith and its laws to justify the pursuit of nuclear weapons by Al-Qaeda and Pakistan, and to provide evidence for the lack of a military dimension in its nuclear programme by Iran, have generated substantial debate in academic and policy circles. A number of scholars have attempted to determine whether an equivalent to the Christian just war theory can be found in the tradition established by Muhammad. Yet, scholars and policymakers have either dismissed the importance of the religious nuclear discourses or they have concluded that they are all-important, without carefully examining them and their basis. This section examines the key Islamic concepts and rules governing warfare in Islam. By doing so, it establishes the foundations upon which the following chapters rely to dissect Al-Qaeda, Pakistan, and Iran's religious nuclear discourses.

⁴ Mousavian, Hossein (April-May 2013), 'Globalising Iran's Fatwa against nuclear weapons', *Survival: Global Politics and Strategy*. Volume 55, Edition number 2. 147-162

⁵ 'Obama U.N. speech transcript 2013 (Text, Video)'. *Politico*. 24-09-2013.

⁶ INT007SNT

⁷ 'Islamophobia: understanding anti-Muslim sentiment in the West', Gallup. 2011.

'The growth of Islamophobia – Can careless talk cost lives?' *The Economist*. 30-07-2011.

'Islamophobia growing in America', RT. 01-09-2010.

⁸ Bobbitt, Phillip (2008), 81

The Sunni-Shiite divide

As discussed throughout this chapter, there is no single, coherent community of Muslims. Instead, Islam has two main branches: Sunni Islam and Shiite Islam. Each one of these two strands is divided into a number of schools of thought. Within Sunni Islam, there are four main schools of thought: *Hanaḥī*, *Hanbalī*, *Malikī*, and *Shafi'ī*, each named after their respective founders. These four schools are mainly distinguished politically and geographically and tend to agree on the sources and methodologies of Islamic law. The *Hanaḥī* school is mainly adhered to in Central and South Asia, as well as the Levant. The stricter *Hanbalī* school⁹ is predominant in the Arab states of the Persian Gulf. The *Malikī* school was historically dominant in Andalusia but continues to remain so in Sahel and the Maghreb. The *Shafi'ī* school, which prevailed in Persia before the Empire became predominantly Shiite,¹⁰ continues to be popular in Egypt and the Horn of Africa. The Shiite branch is composed of three main schools of thought: *Ismāīlī*, *Ja'farī*, and *Zaidī*. The *Ja'farī* school is by far the most predominant. All these

⁹ One of the sub-branches of *Hanbalī* Islam is Wahhabism, the dominant sect of Islam in Saudi Arabia. Wahhabism is controversial due to its fundamentalism. It considers jihad to be a key obligation of the believer, unlike the lesser role given to it by the other branches of the faith. In fact, while both Sunni and Shiite schools of thought have attempted to 'downplay' the role of jihad in the past few centuries, Wahhabi Islam continues to place emphasis on it.

Gold, Dore (2003), *Hatred's Kingdom – How Saudi Arabia Supports the Global Terror*. Washington, D.C.: Regnery Publishing Inc. P. 25

¹⁰ Persia adopted the Shiite branch of Islam in two distinct periods of its history. First, during the third century, under the Buyid dynasty, where the Persian kings, opposed the Sunni caliphate, calling themselves 'King of Kings' (*Shāhanshāh* or Emperor, title given to pre-Islamic Persian kings). Second, under the Safavid dynasty, Persia opposed the Ottoman Empire. In this period, Shah Esmail declared Shiite Islam to be the official religion of the empire. Hence, in the first period, the adoption of Shiite Islam was, in a way, an opposition to the Arabs, while in the second period, it was an attempt to preserve Persia's independence from the Ottomans. These two attempts were successful, as, in the first period, most countries became Arab, besides Persia, which preserved its Persian identity, and in the second, the Ottoman Empire expanded to comprise much of the Balkans, Egypt, and North Africa, beside Persia. It is further important to note, as is discussed further in Chapter Six, that many of the key concepts of Shiite Islam were adapted from Zoroastrianism, which made it more appealing to Persians. These include the return of the Mahdi, as-Sirāt (a bridge taking believers and nonbelievers to heaven or hell (Chivnat Bridge in Avestan). Furthermore, this adoption of Shiite Islam facilitated the revival of Persian monarchy, as the caliph succeeded to the Prophet, while the Persian King was viewed as directly elected by God.

Amir Arjomand, Said (2001), 'Gabya'. *Encyclopaedia Iranica*. Vol. X, Fasc. 4, pp. 341-344

Keddie, Nikki. Richard, Yann (2006), *Modern Iran: roots and results of revolution*. New Haven: Yale University Press. P. 11.

Mafizullah, Kabir (1964), *The Buwayhid dynasty of Baghdad, 334/946-447/1055*, Calcutta: Iran Society. P. 23

Momen, Moojan (1985), *An Introduction to Shi'i Islam*, Yale University Press. PP. 75-76

Ward, Steven (2009), *Immortal – A Military History of Iran and Its Armed Forces*. Washington D.C.: Georgetown University Press. P. 43

schools of thought deduct different laws from the Divine Text and the teachings of the Prophet.

Nevertheless, several key differences between the two main branches of Islam exist. Importantly, as discussed in the following sections, the two branches separated following Mohammad's death and the dispute over his succession. Shiites believe Ali ibn Abi-Talib, Muhammad's son in law, to be his natural and designated successor. Sunnis recognise Abu Bakr as the prophet's successor and first Caliph. As such, Shiites believe rightful succession to stem from bloodline, while Sunnis recognise the caliphs as Muhammad's legitimate successors and authorities.¹¹

The core principles of the faith are shared by both Sunnis and Shiites. However, the two branches have divergent views on the sources of *shari'a*, the interpretation of prescriptions, the centrality of certain ideas in the faith, as well as the practice of certain rituals. What is more, as discussed further in the following sections, the two branches have opposing views on leadership and who can wage war on behalf of the *ummah*.

Methodology of Islamic law

'Islam is a complete way of life; a religion, an ethic, and a legal system all in one.'¹²

The Islamic system of law is drastically different from modern legal frameworks. This difference has been best described by Mostashar al-Doleh. He enumerated four areas of divergence between what he identified as 'western' legal systems (which he based on the French and Belgian legal systems, stemming from the Roman tradition of legal codification) and the *shari'a*.¹³ While his observations cannot be applied to all modern western legal systems, as Common Law is drastically different from the Roman tradition, they can be applied to modern international law, a codified system.

First, codification is a collection of several books covering different laws, while the *shari'a* is a single book, comprising both private and public matters, such as trade, civil, penal, and rules of *jihad*. In fact, 'Muslim law does not distinguish between a treaty, a

¹¹ "Islam", *Encyclopaedia Britannica. Encyclopaedia Britannica Online Academic Edition*. Encyclopaedia Britannica Inc., 2014. Web. 23 May 2014.

¹² Anderson, J. N. D. (1959), *Islamic Law in the Modern World*. Westport: Greenwood Press Publishers. P. ix

¹³ Mostashar al-Doleh (1984), *Yek Kalameh*, Persian text ed. by S. Sajjadi, Tehran: Nashr-e Tharikh. P. 26.

contract of public or administrative law and a contract of civil or commercial law.’¹⁴ Second, while the former ‘was written with the consent of the government and the nation, the second was written according to a single [jurist’s] opinion’. In international law, the consent between a single government and the nation it represents is replaced by that of the international community. In theory, international law transcends national identity and interests, religious and cultural values. Unlike *shari’a*, it embraces universality, not specificities. Third, the level of difficulty of each system constitutes another point of divergence. The western system is written in the ‘common language of the people’ in order to be understood by them, while positive divine law requires explanations and commentaries in order to be clear and understandable for all. In fact, a key component of *shari’a* consists of ‘the dominant doctrines of the schools of law [which] are recorded in the founding texts’, known as *matn* (pl. *mutūn*), while the second component lies in the ‘contributions’ (*sharh*) of ‘each generation of scholars within the school’, which are ‘written in the margins of the main text.’¹⁵ As rightly emphasised by Mostashar al-Doleh, *shari’a* is even complex for Islamic jurists, let alone the masses, which must, nevertheless, comply by its laws. Therefore, the masses are granted rights and required to act in accordance with the laws, which are beyond their reach and understanding, making them dependable on the jurists’ opinions.

All these differences highlight the difficulties of assessing *shari’a*, which, as discussed previously, is divided into several systems due to the existence of a number of schools of thought, making it even more complex. This explains why such an enterprise requires a completely different methodology than the one used in the study of international law or other modern legal systems. Another key characteristic of Islamic law, differentiating it from modern legal systems, lies in its eternal and perpetual nature. ‘It is not society that influences law, but the law that provides a divinely revealed norm and standard to which Muslim society is under a perpetual duty to conform.’¹⁶ While this thesis is not a purely legal enterprise, it attempts to follow the Islamic legal methodology in order to provide the reader with a comprehensive picture of Islamic reasoning. Islamic legal reasoning begins with the *Qur’an*, as the primary source of *shari’a* and is complemented by *aḥādīth* and *ijmā*. These sources and the methodology associated with them are assessed in the next paragraphs.

¹⁴ Anderson, J.N.D. (1959), xv

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 7

The *Qur'an*, regarded by Muslims as the Word of God, revealed to His Messenger, Muhammad, is the first and most uncontested source of *shari'a* examined. The thesis provides the relevant *āyāt* (verses), complemented by commentaries by two of the most widely accepted Islamic scholars, Allameh Tabatabai (1904-1981, Persia) and Tabari (ninth century, Persia) in their respective *tafsir* (interpretations) of the Qur'anic Text, *Tafsir al-Mizan* and *Tafsir al-Tabari*. Tabatabai and Tabari are the most widely accepted thinkers in their respective schools of thought. Furthermore, every *āyah* is checked with Tabatabai and Tabari's interpretations before being cited in this work, in order to ensure that the Words are neither misinterpreted, nor taken out of context. Additionally, running the *āyāt* by these sources will ensure that they are compatible with both the Shiite and Sunni interpretations, as Tabatabai and Tabari are two of the most prominent and respected authorities on Shiite and Sunni jurisprudence respectively. If the two sects interpret an *āyah* differently, the two positions will be presented and the difference highlighted. Where relevant, excerpts are translated from the Persian and Arabic texts into English for more accuracy.

The *aḥādīth*, or teachings of the Prophet (combined with those of the Imams for Shiites), are extracted from reputable sources, providing solely *aḥādīth as-Ṣaḥīḥa*, or the most correct *aḥādīth*. The sources used for the *aḥādīth* are Tabari, Bukhari, and Muslim's respective collections. All these collections are widely regarded as some of the most accurate and precise efforts in the science of *ḥadīth*. Indeed, the enterprise of collecting *aḥādīth* is an intricate one, comprising research to establish the chain of events and figures involved.

Ijmā' or the consensus of the *ummah* (community of Muslims), *ijtihād*, the deductions of general principles from particular cases, and *fatāwā* are assessed based on primary and secondary religious and scholarly sources, as well as interviews with Islamic scholars.

These sources are explained in more detail in throughout the section.

Shari'a, a historical definition

Islam was founded on the *shari'a* (the path), a positive religious law revealed to Muhammad as the Word of God. John Kelsey defines *shari'a* as 'a metaphorical

representation of a mode of behaviour that leads to salvation'.¹⁷ As noted in Chapter Two, the system developed by Islam is one built upon the foundations provided by pre-Islamic Arabia (also known as the 'age of ignorance' - *jāhiliyyah*). In other words, Islam is not a clear departure from the *jāhiliyyah*, but rather a reformation of it. In Montgomery Watts's words:

The system as a whole had deep roots in Arabian society, and there could be no question of replacing it by anything else or even of radically altering it. Muhammad may be said to have accepted in general the principles underlying the system, and to have set himself to reform the most serious abuses.¹⁸

Islam does not allow for a partition between earthly and spiritual matters and *shari'a* governs both.¹⁹ Yet, 'by definition, the caliphate is a rule of *shari'a* and thus a rule of law; a caliph²⁰ himself is nothing but the vicegerent of Muhammad, who supervises the former's praxis. Even Muhammad himself is not a lawmaker but only the messenger.'²¹ This distinguishes Islam from Christianity, which was founded on faith rather than law. As such, Islam is a positive religion, lacking a philosophical distinction between natural law (*jus naturale*) and the law of nations (*jus gentium*). Hence, even though attempts have been made to demonstrate that Islam is also founded on a natural law theory, modern authors have fallen short of proving the existence of such a theoretical framework in the faith. Therefore, not only has the development of *jus gentium*, as established by Grotius in the Christian tradition and western thought, not taken place but one comparable to the just war theory has been lacking. Nevertheless, even if such a theory does have an equivalent in the Islamic tradition, it is important to note that Grotius's distinction between 'just or legitimate' and 'informal' wars does not.

Wars were introduced *Jure gentium*, by Natural Law: which we are to understand thus: that by the *Jus gentium* a certain form of war was introduced, so that wars which take this form, have, *jure gentium*, certain effects. And hence we have a distinction, of which we shall afterwards make use, into a war formal according to *Jus gentium*, which is also called a just or legitimate war, a complete war; and informal war, which may still be legitimate or just [in a more general sense,] that is, agreeable to justice. Informal wars,

¹⁷ Kelsey, John (1991), 44

¹⁸ Watt, Montgomery (1956), 262

¹⁹ Lewis, Bernard (1988), *The Political Language of Islam*. Chicago: The University of Chicago Press. P. 2-3

²⁰ The duty of custodianship falls only on caliphal shoulders. That is to say, upon the shoulders of the one who, like Adam, has been 'taught all the names' (Koran 2:31). Only a prophet, or a prophet-like figure, may slay without murdering. For Rumi, and for the bulk of the Muslim tradition, the Prophet is a 'Perfect Man because he represents not only God's names of beauty, but His names of majesty. Perfection unites the *mysterium tremendum et fascinans*. Hence: God forgives, and the Prophet forgives. God judges, and so does His Prophet. This is lawful only because the ego is disengaged' (Winter in Fisher and Wicker (2004), 12-13).

²¹ Lewis, Bernard (1988), 2-3

if there be a reasonable cause for them, are not supported by *Jus gentium*, but neither are they resisted by it, as will hereafter be shown.²²

Warfare in the Muslim tradition is assessed through a different lens. Armed conflict has been an integral component of Islam, greatly contributing to its inception, development, and spread beyond the Arabian Peninsula, and becoming one of the major universal religions. Warfare played an increasingly central role in the faith as Muhammad gained more power, becoming a political and military leader, in addition to a religious one.²³ As a lifestyle shaping every aspect of the believers' being, Islam encompasses an expansive legal framework, providing guidance on how Muslims should live. Naturally, *shari'a* regulates the conduct of hostilities, in order to keep the believer on the 'straight path' (*sirat-al-mustaqim*) even on the battlefield.

Jihad

Jihad ('legitimate warfare') for God – literally meaning struggle – constitutes one of the main components of the divine law and governs the conduct of warfare.²⁴ The *Qur'anic* image of this endeavour is one of mankind going through a desert and reaching the right path.²⁵ According to some Muslim scholars, *jihad* can only be for God, while others have a more general view of it.

Prominent medieval Muslim thinker, Ibn Khaldoun (fourteenth century, Andalusia) argues that 'people must be invited to Islam by choice or by force' through *jihad*, or the struggle to expand the faith and preserve it. This is viewed as a religious duty (*takleef*) for Muslims.²⁶ Thereby, avoiding *jihad* falls under the category of 'great sins'.²⁷ A saying attributed to the Prophet provides that, 'Every prophet has his monasticism, and the monasticism of this community is the Holy war in the path of God.'²⁸ Ibn Khaldoun pinpoints the idea of religious political duties as the distinction between Islam and other revealed religions, such as Judaism. Indeed, in these faiths, religious duties are not based on politics and religious leaders are not involved in them. Those leaders who do fall within the realm of 'earthly' affairs do so by 'solidarity'. In fact, 'their religion,

²² Hugo Grotius, Book I, IV. 2

²³ Karsh, Efrahim (2006). *Islamic Imperialism: A History*. New Haven: Yale University Press. P. 17

²⁴ Sarrafi and Edalat Nejad in *Great Encyclopedia Islamica (jihad sub verbum)*

²⁵ Lewis, Bernard (1988), 17-18

²⁶ Tabatabai, Javad (2000), 9

²⁷ Lewis, Bernard (1988), 18

²⁸ Al-Muttaqi, *Kanz al-'Ummal*, ii, pp. 252-286, in Watt, Montgomery (1974), *Muhammad: Prophet and Statesman*. Oxford: Oxford University Press. Vol. 1

unlike Islam, does not set the defeat of nations and religions as a duty, rather it is asked of them to preserve the religion amongst those to whom it belongs.²⁹

Indeed, in order for a society to be formed, men must become involved in public affairs, and be prohibited from corruption. This is the role of the king, and since Islam is a public invitation, to which all must adhere, *jihad* becomes a religious duty. Hence, in Muslim states, Caliphate and kingdom are intertwined. Yet, as noted by Javad Tabatabai, 'Islam is an eminently political religion, but [...] the first treatise on politics drawn from the Qur'an and the traditions was not written until the mid-eleventh century when the caliphate was in deep crisis'. Likewise, 'of all the prophets in the Qur'an, it is significant that only the Israeli king-prophets, like David and Moses, are depicted as kings, while Muhammad is only depicted as God's messenger.'³⁰ In fact, the *Qur'an* remains silent on whether his messenger 'is also the political guide of the community' and 'what political power entails'. However, 'because political Islam has prevailed as the sole authorized interpretation of Islam, less and less attention has been paid to this fact.'³¹

What is more, 'in the language of Islam's primary sources, such as the *shari'a* and the positive law, statements having a political connotation are less frequent than those found in the language of ethical-civil law.'³² Modern interpretations of Islam have made it into a more collective religion, while the faith was intended to be and is, in its original form, an inherently individualistic endeavour. Ideological Islam, as incepted in the Islamic Republic of Iran and other Islamic states, is based on a collectivist interpretation, which holds its roots in modern Marxist and even Christianised interpretations of the faith.³³ Indeed, in Christianity, there is no salvation outside the Church, but in Islam, there is no notion of Church. Therefore, a Muslim, unlike a Christian can reach salvation by merely accepting that 'there is no god but God' and that 'Muhammad is His Messenger'.³⁴ This is also applicable to *jihad*. Hence, the

²⁹ Tabatabai, Javad (2000), 9

³⁰ *Ibid.*, in Boroujedi, Mehrzad (2013), 108-109

³¹ *Ibid.*, 117

³² *Ibid.*, 109

³³ Abrahamian, Ervand (1982), 'Ali Shariati: Ideologue of the Iranian Revolution', Merip Reports, no. 102, P. 24

³⁴ The first *hadīth* (his first statement to the people) attributed to the Prophet is the basis for this idea: 'say there is no god but God and reach salvation'. This is in contradiction with the Christian idea '*extra ecclesiam nulla salus*', which was later challenged by Martin Luther, who argued that faith alone (*sola fides*) is enough for salvation.

Majlesi, *Bahar al-anwāl*, Vol. 9, Part 1, P. 143.

following words written by Shmuel Bar are more representative of modern ideological Islam than the faith in its original form:

The “straight path” of Islam is a public road, not a private one, and a Muslim cannot walk it alone. Islam is, in essence, a communal religion with a strong sense of interdependence. Therefore, a central obligation in Islam is to “command right and forbid evil”: a Muslim must set other Muslims on the “right” path.³⁵

As noted in the previous chapters, one of the intricacies of the Islamic legal enterprise can be found in the contradictory nature of the regulations provided by the faith. These inconsistencies are institutionalised, rationalised, and theorised in the Islamic tradition. Some *Qur’anic* verses and *aḥādīth* dissuade Muslims from engaging in armed conflicts. These are generally those dating back to before the Prophet’s migration from Mecca to Medina or *hijrah*³⁶ – and the subsequent increase of his political and military power. Others, generally those revealed or stated after the *hijrah*, encourage the community of believers to bear arms and to fight infidels until ‘they say “There is no god but Allah”’. As noted by prominent Islamic scholar Montgomery Watt, ‘the earliest parts of the Qur’an did not contain any attack on paganism, but rather assumed in the audience a “vague monotheism”’.³⁷ In fact, some early verses provided that nonbelievers should be converted through peaceful means, dialogue, and exchange. ‘Later, however, the unity of God was strictly insisted on, and a critique of increasing severity was directed against idolatry.’³⁸ These provided the grounds for offensive *jihad*. Hence, after the *hijrah* and in the centuries to follow, Islam became one of the major universal religions, expanding well beyond the borders of the Prophet’s birthplace in the Arabian Peninsula. This expansion was predominantly achieved thanks to armed conflict, and in particular, offensive *jihad*.³⁹

Bressolette, Claude (1984), *Dictionnaire des religions*. Paris: PUF. P. 484

³⁵ Bar, Shmuel (2006), 3

What Bar is referring to holds its roots in *aḥādīth*, which call for believers to ‘command right and forbid evil’. One of these *aḥādīth* reads: ‘as long as people command to right and forbid evil and help each other in good deeds and *taqwa* [self-awareness] they will be in good and happiness, but if they do not do so, blessings will be taken away from them and a group will rule the other and they not have any allies on earth or in the heavens.’

³⁶ The *hijrah* marks the beginning of the Muslim calendar.

³⁷ Watt, Montgomery (1956), 309

³⁸ *Ibid.*

³⁹ ‘One Koranic text reads: ‘if they then withdraw from you, and do not fight against you, but offer you peace, God has not opened for you a way against them’ (4:90). Another, however, tells us to ‘fight the idolaters totally, as they fight you totally’ (9:36). The Prophet certainly fought against the idol-worshipping Meccan elite and their clan allies, but whether he envisaged the wars which conquered the Near East after his death has not been easy for modern scholars to determine’ (Winter in Fisher and Wicker (2004), 15).

Jihad has two components: offensive *jihad* and defensive *jihad*. The former entails the launch of an attack by Muslims, in order to combat *mushrikin* (polytheists) and *kuffār* (infidels) and expand monotheism, Islam, and justice.⁴⁰ Hence, contrary to that which Mowatt-Larssen claims, the *Qur'an* does not have 'a clear injunction against taking offensive action', which would imply 'that WMD simply cannot be used as a first-strike engagement'.⁴¹ This, however, is contradictory, as the lack of a clear injunction against taking offensive action would also imply a lack of one against first-strike. In fact, for Sunnis, offensive *jihad* is *wājib*⁴², or obligatory, in the case of the interest of the faith and *ummah* under any ruler, whether *'adil* (just) or *fasiq* (corrupt).

Classical Sunni law, when it came to be formulated three or more centuries after the Prophet's death, typically decided [offensive warfare] on the basis of its theology of Islam's caliphal and Ishmaelite responsibilities to all mankind. It read the Koran as justification for offensive war outside the Arabian peninsula, with the objective not of converting unbelievers by force (an act which Islamic law generally forbade) but of broadening the Abrahamic tent in which members of non-idolatrous religions could worship, under the aegis of gods latest law.⁴³

For Shiites, however, such an endeavour was traditionally only seen as legitimate in so far as it was conducted with the authorisation of an infallible Imam or the Prophet himself. In spite of this, some Shiite jurisconsults,⁴⁴ including the ex-dauphin of the Islamic Republic, Grand Ayatollah Montazeri, have argued that in the absence of the Twelfth Imam, his *nāyēb*, or lieutenant, can also issue this authorisation.⁴⁵ This idea has emerged in the context of the inception of a religious political system in Iran and is rejected by a number of prominent clerics. As such, it cannot be viewed as the sole uncontested position in Shiism. Nevertheless, Muslim scholars, whether Sunni or Shiite, seem to have abandoned the notion of 'offensive *jihad*'.

Part of the background to this remarkable access of Muslim jurisdictions to a global legal framework of purely European provenance is the retreat by most late twentieth century Muslim legal theorists from the so-called 'idealist' interpretation of the Koran's intentions. As Richard Martin summarizes the position, 'the majority of contemporary

⁴⁰ *Qur'an*, 21:107.

⁴¹ Mowatt-Larssen, Rolf (2010), 26

⁴² *Wājib* is one of five *ahkām* or commandments, which are to guide the believer in all aspects of life and signifies what is obligatory. The other four *ahkām* include: *makrūh* or abominable, meaning it is not strictly prohibited, but better avoided; *mubāh*, which refers to what is neither recommended nor forbidden; *mustahabb* that which is recommended; and *haram*, illegal or prohibited. Additionally, the term *halal* describes what is legal.

⁴³ Winter in Fisher and Wicker (2004), 15

⁴⁴ Those qualified to provide advice Islamic legal advice.

⁴⁵ Sarraimi and Edalat Nejad in *Great Encyclopedia Islamica* (*jihad* sub verbum)

Muslim jurists [...] restrict jihad as it applies to modern Muslim nation-states to defense against outside attack and/or internal subversion.⁴⁶

Regardless, Islam had expanded from the Arabian Peninsula to an estimated 1.6 billion Muslims across the globe by 2010.⁴⁷ This expansion was achieved through many holy wars, both offensive and defensive. In other words, Muslims launched wars against nonbelievers, conquered their territories, and coerced them to adhere to their faith. In the early years, these attacks followed letters sent to the rulers of various territories, inviting them to join the faith or be invaded and forced to do so. One such example can be found in the letter to the Persian king: ‘Submit to our authority, and we shall leave you and your land and go by you against others. If not, you will be conquered against your will by men who love death as you love life.’ Likewise, a letter sent to the border-chiefs of the kingdom threatens: ‘Become a Muslim and be saved. If not, accept protection from us and pay the *jizya*. If not, I shall come against you with men who love death as you love to drink wine.’⁴⁸ Muslims also engaged in defensive warfare, to protect the conquered territories from relapsing into infidelity (*kufir*). This ‘was the action of a religious community against non-members of the community, and the community was expanding’.⁴⁹ The first expeditions, led by the Prophet himself, including the Meccan raid, are the earliest examples of such offensive wars. ‘Muhammad cannot have failed to realize that, even if the raids were only slightly successful, the Meccans were bound to attempt reprisals. In these little raids, then, he was deliberately challenging and provoking the Meccans.’⁵⁰ Watt rightly highlights that such initiatives are difficult to understand in modern times, but they were an integral part of the Arab desert life in that era. Indeed, such offensive wars would be qualified as wars of aggression in the language of modern international law, which, as noted in Chapter Two, are prohibited under Article 2(4) of the U.N. Charter.⁵¹

⁴⁶ Winter in Fisher and Wicker (2004), 16-17 – ‘Despite the willingness of mainstream jurists to redefine their reading of the Koran to reduce or abolish the scope for offensive war, the concept of *jihad* remains firmly part of Muslim discourse. Ann May notes that the clearest example has been the reaction to the occupation of Palestine, which has called forth a range of official religious pronouncements, such as the 1973 *fatwa* (verdict) by the Shaykh al-Azhar, for many the highest religious authority in the Sunni world, to the effect that fighting for the liberation of Palestine was a religious duty, not just for Palestinians, but for all Muslims. The *fatwa* was reiterated at the Third Islamic Conference in Ta’if, in 1981’ (*ibid.*, 17).

⁴⁷ ‘The Future of the Global Muslim Population – Projections for 2010-2030.’ *The Pew Forum*. 27/01/2011.

⁴⁸ Lewis, Bernard (1974), vol. 1, 228

⁴⁹ Watt, Montgomery (1961), 108

⁵⁰ *Ibid.*, 105

⁵¹ U.N. Charter, Article 2(4)

While Islam, as a universal religion, transcending time and space, prescribes the deeds of its Messenger as the path to follow, one particular view among Muslim scholars contends that such wars can only be waged by the Prophet himself or his legitimate, infallible successors. Ibn Khaldoun notes that it was with the death of the Prophet and during Abu Bakr's caliphate that *jihad* with the enemies of Islam began and united Arabs. However, until the end of Ali's caliphate, this rule was merely a religious one, replacing the Prophet, not a kingship.

Muslims did not only engage in combat to expand the faith or defend it against opponents. They also preserved the faith by sustaining the community thanks to wealth accumulated during the raids. Hence, with the Arab conquest of neighbouring territories, Muslims began 'to have access to a vast sea of welfare and wealth, so much that one horseman's part of the booty in some of the *qazawat* [raids] reached thirty thousand dinar in rice or its equivalent'.⁵² Before achieving this newfound wealth, most Arab tribes were so poor they 'ate different kinds of scorpions'.⁵³ Ibn Khaldoun further recounts that Arabs did not leave anything behind but water and soil, noting that these plunders were legal according to *shari'a*, as 'they were obtained in an attempt to expand the religion'.⁵⁴

Historically, means and methods of warfare were not incredibly different in the Islamic and western traditions. For instance, during the Crusades, both Christians and Muslims engaged the other side similarly. From a weaponry point of view, some have used the example of the catapult, a non-discriminate weapon extensively used by Muslim armies, arguing that it sets a precedent.

The catapult — precursor of artillery and air power — which was capable of sending a burning projectile into a populated city, where the resulting fire might kill women or children. Authorities differed on whether that tactic was permissible. Some disallowed the catapult when children or Muslim captives were in the city. In support, they cited a verse from the Koran that reads, "Had they been separated clearly, then We would have chastised the unbelievers among them with a painful chastisement." According to this school of thought, the "separation" of permissible targets (i.e., non-Muslim men) from impermissible targets is the precondition for a general attack. Another school of thought, by contrast, permitted the use of the catapult regardless of collateral damage in order to serve the general interest of the Muslims.⁵⁵

⁵² Tabatabai, Javad (2013), 8

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Feldman, Noah (2006). 'Islam, Terror and the Second Nuclear Age', *The New York Times*. 29-10-2006.

Likewise, many of the principles governing warfare in the two systems are similar and stem from comparable concerns.⁵⁶ The following sections examine the foundations of these claims by addressing these two rationales for warfare in Islam.

Sources

Qur'an

Shari'a provides a very rigid and, yet, relatively flexible legal framework. This dichotomy is very noticeable in the *Qur'an*. Indeed, the *āyāt* are commonly separated into two groups: those with a very clear and straightforward meaning, known as *muhkam* and those with multiple interpretations, known as *mutashabeh*. What is more, Islamic scholars identify two categories of verses, according to when they were revealed to the Prophet: prior or after the *hijrah*, or his journey from Mecca to Medina. Meccan verses are those revealed to Muhammad before the *hijrah* while Medinan verses are those revealed post-*hijrah*. While there is some debate surrounding the classification of some of the verses, the majority of verses have been identified as either Meccan or Medinan. Most scholars assert that the faith was merely private and apolitical during the Meccan period, becoming political with the Prophet's *hijrah* and, according to some, as a result of his gaining power. Likewise, Medinan verses are far more detailed and explicit than Meccan verses.

The notion of *jihad* emerged during the Medinan period and was purely defensive at first. Many of the verses concerning the conduct of warfare were revealed in the context of the military campaigns undertaken and led by the Prophet, either against Arab polytheists, or Jewish tribes.⁵⁷ However, upon the completion of the conquest of Mecca, the war became 'total', meaning against all pagans, 'in all places and at all times'. The fifth verse of *Surat Al-Tawbah* (*Qur'an* 9:5), referred to as, *āyah at-Sayf*⁵⁸ or the verse of the sword, is said to take precedence over previous *āyāt* and abrogating them (*naskh*).⁵⁹ This verse (5) of *Surat al-Tawbah* reads: 'kill the polytheists wherever you

⁵⁶ INT003SNT

⁵⁷ Sarrami and Edalat Nejad in *Great Encyclopedia Islamica (jihad sub verbum)*. 22

⁵⁸ *Qur'an*, 9:5

⁵⁹ Sarrami and Edalat Nejad in *Great Encyclopedia Islamica (jihad)*

Delong-Bas, Natana (2004). *Wahhabi Islam - From Revival and Reform to Global Jihad*. Oxford: Oxford University Press. P. 103: 'The legal principle of *naskh* considers that a Qur'an verse revealed at a particular time may have been overridden by a later revelation [...] *Naskh* is a source of controversy

find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.’

Hence, the *Qur'an* has different, and sometimes contradictory, prescriptions regarding some key issues, including the faith's universality and its relationship to paganism. In other words, the Prophet's increased influence and power led to a different approach to the expansion of the faith. This issue is of crucial importance, as it is one of the sources of the complex and contradictory nature of the Text, and consequently, of its laws.⁶⁰ Furthermore, the fact that these are approached differently makes the laws governing the conduct of warfare more complex. Nevertheless, some argue that Islam is an inherently political religion and that ‘the foundations of Islam's political thought were established in Mecca’.⁶¹ Hence, the Prophet's main goal was to establish a Muslim community, which would negate the infidels' reign and establish the divine rule, which he was not successful in doing in Mecca.⁶² The Prophet's struggle against his tribesmen of *Quraysh* was for political power and divine rule in Mecca. In fact, Hamed Al-Tayjani argues that the difference between Meccan and Medinan verses is not one of essence but rather due to circumstance.⁶³ There exists only one source of power and governance, which lies in God. This fact is the very root of the unity of the Muslim community. Hence, the divine order is for all of mankind and human beings are required to revolt against any leadership that is not one of God's prophets, until their leadership is established.⁶⁴ This ‘truth’ is held in the *Qur'an*, where the link between *ummat al-sāliha* (or the righteous community), the revealed Text, and divine governance is established:⁶⁵ ‘Indeed, my protector is Allah, who has sent down the Book; and He is an ally to the righteous.’⁶⁶ It is only through this divine reign that justice can be achieved. ‘O Prophet, strive against the disbelievers and the hypocrites and be harsh upon them. And their refuge is Hell, and wretched is the destination.’⁶⁷

among theologians and legal scholars alike because of the implication that there is an error in the revelation itself.’

⁶⁰ Watt, Montgomery (1956), 309

⁶¹ Abdollahi Aran, Abdollah, 1

⁶² *Ibid.*

⁶³ *Ibid.*, 2

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, 6

⁶⁶ *Qur'an*, 7:196

⁶⁷ *Ibid.*, 66:9

The *Qur'an* clearly addresses and encourages what is known as the notion of deterrence in modern international affairs. It is, however, important to note that deterrence as understood in this context is very different from our modern conception of it. Here, deterrence is defined as a means of protecting the 'life, property, and honour' of Muslims against the enemy.⁶⁸ However, there is no consensus on the scope of deterrence among Islamic scholars. While some believe it allowed for Muslims to develop a deterrent in response to their enemies acquiring it, in order to defend their lives, others firmly reject any notion of deterrence encompassing nuclear weapons.⁶⁹

Prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged.⁷⁰

Several *āyāt*, revealed to the Prophet in the context of the war in Mecca, command him to wage war in a proportionate manner.

Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors.⁷¹ And kill them wherever you overtake them and expel them from wherever they have expelled you, and fitnah⁷² is worse than killing. And do not fight them at al-Masjid al-Ḥarām until they fight you there. But if they fight you, then kill them. Such is the recompense of the disbelievers.⁷³ And if they cease, then indeed, Allah is Forgiving and Merciful.⁷⁴ Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.⁷⁵

According to Tabatabai, these *āyāt* were revealed simultaneously, and gave the permission for the first time to the Prophet to wage war against the pagans and idol-worshippers of Mecca, who led the Muslims to leave the city.⁷⁶ Consequently, the *āyāt* allow Muslims to fight those who are fighting them, and accordingly to engage in defensive warfare. The *āyāt* do not mention anything about civilian immunity or distinction between combatants and noncombatants. Tabatabai rectifies a misinterpretation of this lack, according to which women and children are to be granted immunity. He states that there is no mention of 'women and children', as the revealed Words solely address the case of those who 'fight' the Muslims. As it is taken for

⁶⁸ Tabatabai, Seyed Mohammad Hossein (Allameh). *Tafsir al-Mizan*. Vol. 9, 153

⁶⁹ INT003SNT

⁷⁰ *Qur'an*, 8:60

⁷¹ *Ibid.*, 2:190

⁷² Chaos

⁷³ *Ibid.*, 2:191

⁷⁴ *Ibid.*, 2:192

⁷⁵ *Ibid.*, 2:193

⁷⁶ Tabatabai, Allameh, Vol. 2, 187

granted that women and children ‘do not have the power’ to engage in the conduct of warfare, there is no need to mention that they are granted immunity.⁷⁷

Another verse invites Muslims to:

Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture - [fight] until they give the jizyah⁷⁸ willingly while they are humbled.⁷⁹

This verse provides evidence that the *Qur'an* does not only offer the Muslim community with grounds to defend itself against invasion, but to initiate *jihad* by waging wars of aggression in order to convert infidels to Islam. Tabatabai specifies that, ‘those who do not believe in Allah’ refers here to the peoples of the Book,⁸⁰ whom are granted a special status, above the pagans, by the *Qur'an*. In a different source, the divine Text explicitly states:

We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.⁸¹

The *Qur'an* also addresses the issue of truces and peace treaties, and the potential breach of them. While forbidding Muslims to be in breach of such treaties, it is provided that they shall allow the violators to think about their actions and repent by giving them four months to change their decision in ‘the outmost freedom’ and join the faith, or be killed.⁸² ‘And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush.’⁸³ *Surat At-Tawbah*, or the chapter on repentance, further provides: ‘Fight them; Allah will punish them by your hands and will disgrace them and give you victory over them and satisfy the breasts of a believing people.’⁸⁴ Moreover, ‘if they break their oaths after their treaty and defame your religion, then fight the

⁷⁷ *Ibid.*

⁷⁸ Taxes paid by non-Muslims living in Muslim territories.

⁷⁹ *Qur'an*, 9:29

⁸⁰ Tabatabai, Allameh, Vol. 9, 315

⁸¹ *Qur'an*, 5:32

⁸² Tabatabai, Allameh, Vol. 9, 250

⁸³ *Qur'an*, 9:5

⁸⁴ *Ibid.*, 9:14

leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.’⁸⁵

Sunnah and Ḥadīth

Sunnah or the tradition established by the Prophet – combined with the Imams, succeeding him, for Shiites – is customary law complementing the *Qur’an*. It constitutes the second source of *shari’a* and stems from the deeds and words of the infallible Prophet (and Imams) and is provided by *ḥadīth* scholars, who must follow a certain methodology. Muhammad (and the Imams) is considered as infallible (*ma’sūm*), fully inspired by God and never spoke or acted under the influence of passion. Therefore, their words and deeds constitute precedents, which provide the *ummah* with a model to emulate. For these precedents to be established, ‘the words and deeds of the Prophet Muhammad (his *sunnah*), being an embodiment of the divine command and an expression of God’s law (*shari’a*), were preserved by his Companions, in the form of discrete anecdotes’. These anecdotes are referred to as *aḥādīth* (plural of *ḥadīth*).⁸⁶ They have been ‘transmitted orally through the generations’ becoming ‘the source of juristic discussion (*fiqh*)’.⁸⁷ *Fiqh* (Islamic jurisprudence) is the compilation of Islamic norms from Islamic legal sources, literally translating to ‘deep comprehension’. Likewise, for Shiites, the collections of the Imams’ accounts complement the moral framework established by the Prophet and his Book. *Ḥadīth* scholars must confirm that the saying or deed attributed to the Prophet or one of the Imams was indeed approved or rejected by the Prophet or Imam himself.

A *ḥadīth* has two components: the first one is the identification of the chain of people involved in the account, while the second lies in the actual account of the event. The first component determines the status of the *ḥadīth*, thereby establishing whether it is absolutely authentic, arguably authentic, or weak. This is achieved by identifying the people involved in the account and the reliability of their word. This leads to the *ḥadīth* being categorised by authenticity, ranging from absolutely authentic to weak. These different categories, such as *saḥīḥ*, *hasan*, *dha’īf*, show the level of authenticity of a *ḥadīth* and how reliable it is as a precedent. The most perfect or authentic *aḥādīth* are

⁸⁵ *Ibid.*, 9:12

⁸⁶ Calder, Norman (1993), *Studies in Early Islamic Jurisprudence*, Oxford: Clarendon Press. P. vi

⁸⁷ *Ibid.*

referred to as *al-ḥadīth al-Ṣaḥīḥ*. *Aḥādīth al-Ṣaḥīḥa* (pl.) have been compiled by several scholars, whose work is relied upon as they undisputedly represent the most accurate source of *ḥadīth*.

Some *aḥādīth* governing the conduct of warfare can justify offensive *jihad*. These suggest that God ordered the Prophet and his followers to fight to establish a *dār al-Islam*⁸⁸ (house of Islam).

Outside the House of Islam, the *dar al-Islam*, there is no peace, there is only war and predation; and unless one is militarily prepared, that House of War will surely invade and destroy the believing realm. In this way, classical Muslim theorists adopted a somewhat Hobbesian view of the world as strongly tending to chaos and aggression, and honored the believing warrior as the indispensable earthly guarantor of tranquillity and justice.⁸⁹

As such, a *ḥadīth* quotes the Prophet as saying: ‘I have been commanded to fight against people till they testify to the fact that there is no god but Allah, and believe in me (that) I am the Messenger and in all that I have brought.’⁹⁰ Another one, recounting the Second Pledge of Aqabah,⁹¹ reads: ‘Those present at the oath of Aqabah had sworn an allegiance to Muhammad. It was a pledge of war against all men. Allah had permitted fighting.’⁹² Another one tells us that, ‘Allah had given his Messenger permission to fight by revealing the verse “And fight them until persecution is no more, and religion is all for Allah.”’⁹³

Other *aḥādīth* allow for those who try to divide the Muslim community to be fought and killed: ‘If anyone comes out against my community when they are united and seeks to divide them, kill him, whoever he may be.’⁹⁴ It is further provided that, ‘If anyone

⁸⁸ Kelsey defines *dār al-Islam* as the ‘territory of Islam’, indicating ‘the area within which Islam is the dominant political reality’. It is ruled by a Muslim, ‘the system of government is organized to serve the expansion of Islam, and the people within the territory are identified according to their participation in various groups, each of these defined by its relation to Islam.’ These include Muslims but also ‘the protected people’ or *ahl al-dhimma* (Christians and Jews primarily), as well as the *bughat* or rebels (‘Muslims dissenting from the policy of the established leadership’), the apostates or *al-murtadd* (Muslims who have left the faith), as well as the *muharibun* or brigands, ‘criminals who prey off ordinary people and live as “highwaymen”’. This idea stands in contrast with *dār al-harb* or ‘territory of war’, which ‘is a generic term for political-territorial associations not governed by Islam.’ In *dār al-harb*, ‘the overarching category is *harbi* (roughly, “war person”). Subcategories, for example women, children, the elderly, or, in some cases, Muslims residing in the territory of war, are referred to in discussions of the means of war, especially with respect to the protection of noncombatants.’

Kelsey (2007), 99

⁸⁹ Winter in Fisher and Wicker (2012), 12

⁹⁰ Muslim, C9B1N31

⁹¹ The pledge made by some believers to the Prophet during a secret meeting in Mount Aqaba, where they took an oath to protect him and the faith.

⁹² Tabari, VI:138

⁹³ *Ibid.*:139

⁹⁴ Al-Muttaqi, *Kanz al-Ummal*, iii, pp. 197-201 in Lewis (1974), vol. 1

shoots an arrow at the enemy on the path of God and his arrow reached his enemy, whether it hits him or misses, it is accounted equal in merit to liberating a slave.’⁹⁵

However, as stressed previously, the scope of application of these *aḥādīth* is disputed. This is a key source of contention between the Sunni and Shiite sects. Indeed, some schools, including the Shiite sect, only see the authority of the Prophet and his legitimate successors (the Imams in his bloodline) as valid to wage wars of conversion. In other words, only the Prophet and the Imams could lead such wars and in his absence, no one else has the authority to do so. Hence, for Shiite Twelvers, until the appearance of the Twelfth Imam, no one has the authority to give an order for *jihad*. Other schools, mainly Sunni, do not believe in such restrictions. Following the Prophet, the caliphs were seen as legitimate authorities to wage war. After the death of the last Caliph, many, including Egyptian Muslim Brotherhood leader Sayyid Qutb, claimed that *jihad* could and should be waged against new *jāhiliyyah* or ignorance. Therefore, a number of political and military leaders and extremist figures have proclaimed themselves as *Amir al-momenīn* (leader of the believers), and have issued *fatāwā* or tried to incite their followers to engage in *jihad* against non-believers and those who have left the faith and oppose it. Furthermore, a *ḥadīth* attributed to the Prophet is a source, which has led some scholars to conclude that believers must follow any leader, whether just or unjust. ‘*Jihad* is incumbent upon you with every Amir, whether he be godly or wicked and even if he commit major sins.’⁹⁶

Ijmā‘

The third source of Islamic law lies in one as reliable as the previous: the consensus of the *ummah* on a particular topic, known as *ijmā‘*. The foundation of this reliability can be found in a *ḥadīth*⁹⁷ attributed to the Prophet, according to which ‘[his] *ummah* will never agree on error’. In order to reach a consensus, the *mujtahidīn* (jurists) of a given sect need to agree on the ruling. It is important to note that these jurists, unlike the Prophet, are not infallible individually, but their consensus elevates their ruling to the rank of the ones issued by the infallible Prophet himself. This implies that such consensus is not really that of the entire Muslim community, but rather of the given

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Al-Shafi'i, vol. 2, 187

sect. Consequently, *ijmā'*, as a source of *shari'a*, varies from one sect to the other. This, in turn, has become a source of confusion.⁹⁸

In the case of the legality or prohibition of weapons of mass destruction under Islamic law, there is no single, unified position across the Muslim world. Muslim scholars and jurists have presented and supported arguments for and against their production, possession, and use. In the Sunni world, especially, there hardly seems to be a consensus around the legality or prohibition of nuclear weapons. In Iran, only a few clerics have spoken about the topic of the legality of weapons of mass destruction. The debate has mainly been limited to nuclear weapons, as these weapons have become topical due to Iran's nuclear programme and the controversy it has generated. This has especially been the case since Iranian leadership has attempted to use the Muslim faith and Shiite jurisprudence as evidence of the peaceful nature of its programme. However, none of the major *marajeh*⁹⁹ seems to have engaged in the debate, let alone sanction the prohibition or legality of the bomb. Nevertheless, those *marājeḥ* who have been questioned on the topic and who have engaged in the debate, have affirmed that the indiscriminate 'use' of such weapons would be banned by the faith. As strategic nuclear weapons are by nature indiscriminate, their prohibition seems to be generally accepted by Shiite authorities. The positions of the main *marajeh* who have engaged in the debate are assessed in the following sections. However, whether this can be viewed as amounting to *ijma'* remains unclear.

Qiyās and 'ijtihād

'ijtihād is a method of interpretation of the divine law through the deduction of general principles from particular cases. Similar to *ijmā'*, *'ijtihād* is based on the idea of reasoning through an analogical method of reasoning, *qiyās*.

[The latter] was almost certainly a technique derived from rabbinical practice. For instance, grape wine was not prohibited in the Qur'an, but jurists outlawed it by analogy¹⁰⁰ to date wine, which was. This practice of analogical reasoning to derive legal

⁹⁸ Keddie, Nikki (1983). *Religion and Politics in Iran – Shi'ism from Quietism to Revolution*. New Haven: Yale University Press. P. 36

⁹⁹ Plural of *marja'*: Shiite religious authorities, competent to interpret *shari'a* and can be followed and imitated by believers.

¹⁰⁰ The analogy held intoxication as its rationale. All analogy must be based upon a rationale.

judgments not explicitly found in the Qur'an or in the community's collective memory of the Prophet's practice was called *'ijtihād*, or individual endeavour.¹⁰¹

'ijtihād, based on legal analogy, revolves around the primacy of the rationale behind a given ruling and is developed by personal opinion or judgment (*ra'y*). *Ra'y* is the judgment of a jurist, issued in the absence of customary law or consensus on a given matter. Since *ra'y* was not an agreed-upon conscious legal method, it was even less likely to result in a consensus than *'ijtihād*-based on analogy. In the Sunni schools, analogy replaced personal opinion as a legal method.¹⁰² The method is composed of three main components: the root or principle contained in the revealed law; the issue that needs to be resolved; and the common denominator to both the root and the issue, along with the extension of the solution. The concept of *'ijtihād* is comparable to that of the jurisprudence established by precedents in the Common Law system. The value of *qiyās* is not equal to that of *ḥadīth*, given that, as mentioned previously, the believers, including the *mujtahidin*, are not infallible like the Prophet. However, if the community of Muslims reaches a consensual agreement on a given solution, leading to *ijmā'*, it will gain the same value as the *ḥadīth*.

An important consequence for jurisprudence is that a consensus reached by one generation of jurists is considered binding on their intellectual descendants. This becomes a mechanism of 'traditionalization', of consolidating and maintaining continuity in schools of law, and in the so-called 'closure of the gate of *'ijtihād*'.¹⁰³

The 'closure of the gate of *'ijtihād*' is also a source of contention.

It is often stated, for instance, that the door of *'ijtihād* was never closed for Shi'is. The closing of the door of *'ijtihād* refers to the belief held by many Sunnis that absolute *'ijtihād* was no longer possible after the death of ash-Shafi'i. But since Shi'is at first rejected personal opinion, *'ijtihād*, and the validity of considered opinion (as opposed to a decisive judgment), their jurisprudents were theoretically far more constricted than those of the Sunnis.¹⁰⁴

Nevertheless, since the 'gates of *'ijtihād*' were closed in the third or fourth century, Sunni jurists have been following 'the authority of the founders'. This act is known as *taqlīd* and consists of seeking 'arguments and rulings [...] in the existing corpus.' Hence, it is believed that 'the authoritative *ijmā'* of previous generations [is] binding on jurists, thus further restricting the scope of *'ijtihād*.' This view is in contrast with the

¹⁰¹ *Ibid.*, 34

¹⁰² *Ibid.*, 35

¹⁰³ Zubaida, Sami (2003), *Law and Power in the Islamic World*. London: I. B. Tauris. P. 14

¹⁰⁴ Keddie, Nikki (1983). *Religion and Politics in Iran – Shi'ism from Quietism to Revolution*. New Haven: Yale University Press. P. 36

Shiite position, ‘which sanction[s] and require[s] independent *’ijtihād*, recognizing the rank of *mujtahid* as the highest in the clerical hierarchy.’¹⁰⁵ Regardless, ‘this is also the position challenged by modern reformers and fundamentalists alike, asserting their right to practice *’ijtihād* to arrive at novel formulations in line with their respective projects.’¹⁰⁶

In the case of nuclear weapons, *qiyās* could come into play if *mujtahidin* outlawed or allowed the acquisition, threat, and use of the bomb based on a previous explicit prohibition or validation, for instance of the catapult. However, the *Qur’an* and *sunnah* neither explicitly outlaw nor allow the use of any weapons which could be used as a precedent in the case of WMD. Nevertheless, arguments for the analogy of nuclear weapons and more generally, WMD, with poisoning water and other indiscriminate tactics have been made. Islam prohibits the poisoning of bodies of water and blocking the access of the adversary to such bodies during combat.¹⁰⁷ Other principles, similar to the cardinal norms of international humanitarian law, as surveyed in Chapter Two, exist in Islam. First, the notion of distinction, as indicated previously, prohibits indiscriminate means and methods of warfare, including the use of poison (pouring it in water or spreading it through the air) and the burning of trees. Hence, arguments are made, especially in Shiite Islam, that any indiscriminate tactic in nature is prohibited by the faith. As mentioned previously, in order for an analogy to be made, it must be based on a rationale. In this case, the rationale behind prohibiting the use of poison or the blocking of bodies of water has been based upon the idea that they inflict harm indiscriminately. Given the nature of weapons of mass destruction and their being designed to kill indiscriminately and disproportionately, it can be argued that these weapons are prohibited by the faith.¹⁰⁸ Second, the notion of proportionality (as highlighted in the previous sections, appears in the *Qur’an* and *ahādīth*, which invite believers to wage war without ‘transgressing’.¹⁰⁹ Muslims are invited not to target noncombatants, unless they serve as a human shield (*tatarros*), in which case, they are ‘collateral damage’.¹¹⁰ However, in Islamic law, as in international humanitarian law,

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Ayatollah Fazel-Lankarani, ‘Eighth International Conference on Imam Khomeini’s Foreign Policy: Islam and the Non-proliferation of Weapons of Mass Destruction’. The Institute for Political and International Studies, Tehran. 2-06-2014. Author notes.

¹⁰⁸ Feirahi, Davood, in Popovski, Vesselin, *et al.* (2009), 272-273

¹⁰⁹ *Qur’an*, 5:32/2:192

¹¹⁰ Feirahi, Davood, in Popovski, *et al.* (2009), 273

whether this is justifiable depends on a number of issues, including the number of noncombatants who become collateral damage, and the importance of the military target.¹¹¹

These principles serve as guidelines in discussions around the legality or prohibition of the use of technological innovations in warfare. The precedent set by using these principles as a rationale allows Muslims to conclude that certain means and methods of warfare are prohibited by the faith.

Fatāwā proliferation

A lot of attention has been paid to *fatāwā* – plural of *fatwā* – in the west since 1979, and especially since 9/11. This is due to the lack of understanding of the value of *fatāwā* and their general association with destructive actions and assassinations. Indeed, famous *fatāwā* in the west include that ordering the killing of British writer Salman Rushdi by Ayatollah Khomeini, those legitimising terrorist attacks, and those regarding the procurement of CBRN weapons by terrorist groups. Therefore, the authority of *fatāwā* has been blown out of proportion by a western audience which is unable to grasp the notion, foreign to its understanding of a legal framework.

Ayatollah Khamenei's *fatwā* banning nuclear weapons has generated a lot of debate in policy circles in the west, especially the United States. Some view this *fatwā* as a potential confidence and security-building measure and solution to the Iranian nuclear issue, while others question its validity and existence.¹¹² Even Iranian officials, including former Ministry of Foreign Affairs spokesman, Ramin Mehmanparast acknowledged this by stating that westerners “‘don't have an accurate understanding of Islamic beliefs and fatwas issued by great scholars,” suggesting that the U.S. and its allies must take Khamenei's edict seriously.”¹¹³ Hence, while recognising that the language used by Tehran is too vague and incomprehensible for Iran's interlocutors, he still insisted that this incomprehensible notion and abstract prohibition should be taken seriously.

¹¹¹ INT003SNT

¹¹² Mousavian, Seyed Hossein, ‘Globalising Iran's Fatwa Against Nuclear Weapons’. *Survival*, April-May 2013, vol. 55, 2. PP. 147-162

‘Opinion: Obama, the Bomb and the Fatwa’, *Asharq al-Awsat*. 14-03-2014.

¹¹³ ‘Iran: Religious Decree Against Nuclear Weapons Is Binding’. CBS News. 15-01-2013.

A *fatwā* is an ‘authoritative ruling’ or decree on a ‘matter of law or worship, usually issued in response to a question’.¹¹⁴ As noted by Bar, ‘modern Muslim regimes have used ‘ulama-issued *fatwās* to legitimize their policies, bolster their Islamic credentials against domestic opponents, and mobilize support against foreign enemies.’¹¹⁵ This is certainly true for the three cases studied in this thesis: Al-Qaeda, Pakistan, and Iran. In fact, it is the common denominator between these three otherwise very different actors and their nuclear ambitions. It is important to note that *fatāwā* do not constitute a source of Islamic law, as do the *Qur’an*, *sunnah*, *ijmā’*, and *qiyās*, but is merely a *hūkm*. *Hūkm* is the legal opinion of a *mujtahid*, based on the general foundations of the *shari’a*, meaning the *Qur’an* and *sunnah*. However, if all *marajeh* and *ulama* accept this *hūkm*, it amounts to *ijmā’*, thus constituting a source of law.

The proliferation of *fatāwā* has led them to become an ‘area of contested authority’. This is due to two factors. First, individuals and groups with varying levels of authority (often lacking the competence to issue such an edict) and knowledge of Islamic jurisprudence issue decrees with varying degrees of authority. Second, *fatāwā* issued by a single *marja’* or figure now have an outreach, transcending the boundaries not only of the circle of followers of the given *marja’* or the group, but also those of the faith. This is mainly thanks to modern technological tools, facilitating communication beyond national borders. What is more, *fatāwā* are now issued across the Muslim world and beyond it, and consumed and analysed throughout the world. It is further important to note that regardless of the actual competence of a given figure to issue religious decrees, many adhere to them and consider them binding. Hence, legitimate centres of Islamic scholarship and *marāja’*’s authority are no longer uncontested, as Islamist groups and radical jihadists question their allegiance and issue countering *fatāwa*.¹¹⁶

Hence, many countries throughout the Muslim world have established *fatwā* councils. Some of these councils were created within existing Islamic scholarly centres, others independently from them. These councils can further be a political entity. They are composed of Islamic jurists, who have the authority to interpret the divine laws and issue decrees in response to questions. The purpose of these councils is to ‘provide Islamic legitimacy to political decisions and secular laws.’ Bar argues that, challenged by the rise of radical Islam and its use of *fatāwā* as a tool to promote its agenda, the

¹¹⁴ *Ibid.*, 237

¹¹⁵ Bar, Shmuel (2006), 6

¹¹⁶ Zubaida, Sami (2003), 162

authority of these councils has declined steadily. This has led ‘the religious establishment’ to respond by ‘providing edicts prohibiting the issuing of fatwas by “non-authorized” clerics.’¹¹⁷

Given the reservations regarding his authority to issue a *fatwā*, the so-called decree issued by Khamenei seems to fall under this category. Indeed, as further discussed in Chapter Six, Khamenei is not a *marja* ‘in the traditional sense’¹¹⁸ and his status as Grand Ayatollah is disputed.¹¹⁹ ‘Khamenei’ had neither emerged by popular consensus nor received the support of the leading authorities for his religious credentials, but was in fact “promoted” to successor [of Khomeini] by the religio-politicians.’¹²⁰ During his presidency and until the late 1980s, Khamenei was merely a *hojjat al-Islam*¹²¹ and has not received the approval of any chief *marja* ‘since.’¹²² The scope of this so-called *fatwā* is also unclear, as according to the Iranian 2005 Communication to the IAEA, the wording of the *fatwā* is as follows: ‘the production, stockpiling and use of nuclear

¹¹⁷ Bar, Shmuel (2006), 6-7

¹¹⁸ In Shiite Islam, *Marāja* were traditionally recognised by the clerical hierarchy – who provided a given person with the authorisation to become a *mujtahid* – before being chosen by the believers spontaneously according to their reputation, justice, and knowledge. However, since the inception of the Islamic Republic, the *marāja* are ‘appointed’ – albeit unofficially – by the government and those who were not, such as Ayatollah Sāneī, can be imitated, unofficially, by believers. This development was denounced by established clerics following the revolution. They ‘protested the government’s interference in selecting the *marja*’ [sic.] and its politically motivated departure from Islamic doctrine.’

Menashri, David (1997), 14

Khamenei himself, was neither recognised as a *mujtahid* by his contemporary Shiite authorities, nor chosen by believers, but rather ‘appointed’ by the Islamic regime. In fact, his *marja* ‘īyyat was questioned by the greatest Shiite authorities of the time, including Grand Ayatollahs Hossein-Ali Montazeri, Mohammad Kazem Shariatmadari, Hassan Tabatabai-Qomi, Ya’sub al-Ddīn Rastegar-Juybari, and Mohammad Shirazi. These Grand Ayatollahs’ opposition to Khamenei and, in some cases, the very notion of supreme leadership, led to their seclusion and, in some cases, imprisonment in the years following the Islamic Revolution. Since the 1990s, there has been a ‘crisis’ of *marja’īyat* in Iran, as the Islamic Republic eradicated a generation of jurisconsults, replacing them with ‘religio-politicians’, whose knowledge and justice would otherwise not qualify them to be at that level.

Menashri, David (1997), 10/13

¹¹⁹ To borrow Mohsen Kadivar’s words: ‘Ayatollah Khomeini became supreme leader based on his *marja* ‘īyyat, while Mr. Khamenei became *marja*’ based on his supreme leadership.’

Kadivar, Mohsen (2014), *Ebtezal-e marja’īyyat-e shi’eh – Estizah-e marja’īyyat-e maqam-e rahbari – hojjat al-Islam va moslemīn Khamenei*. Official website of Mohsen Kadivar. P. 23

¹²⁰ Menashri, David (1997), Menashri, David (1997), ‘Revolution at a Crossroads – Iran’s Domestic Politics and Regional Ambitions’. Policy Brief No. 43. Washington, D.C.: The Washington Institute for Near East Policy. P. 11

¹²¹ Khamenei speech before 42nd UNGA, ‘Iran President speech’, C-Span. 22-09-1987.

¹²² Menashri, David (1997), 10/13

Many prominent Shiite scholars stated they did not support his leadership, as they did not consider him to have the scholarly authority necessary to be a *marja*’.

Kadivar, Mohsen (2014), 141-142

weapons are forbidden under Islam.’¹²³ Yet, in his message, which was read by his international legal adviser, Aliakbar Velayati, at the opening of the 2010 International Conference on Nuclear Disarmament and Non-proliferation held in Tehran, the Supreme Leader’s explicit prohibition merely encompassed the ‘use’ of these weapons.¹²⁴ Statements issued later, by Khamenei himself, merely highlight a ban of the use, with a philosophical and ethical discussion about the production and stockpiling of these weapons, rather than a concrete prohibition. Nevertheless, despite his dubious credentials as an authoritative Islamic scholar, jurist, and cleric, Khamenei holds considerable power, given his role as the highest authority in the country. Therefore, his *fatwā*, may not have much religious weight, and would have been ignored under different circumstances, is a key political tool regardless of its religious validity (this is further discussed in Chapter Six). Nevertheless, according to Ayatollah Fazel-Lankarani, had Ayatollah Khomeini been alive, he would have issued the same *fatwā* as his successor, as the decree is ‘based’ on the principles of the *Qur’an* and Shiite *fiqh*.¹²⁵ Shiite clerics in Iran ‘have generally agreed’ with Khamenei’s stance as expressed in the *fatwā*.¹²⁶ As noted by Robert Gleave, ‘the standard Iranian view is that the legal classifications cascade if use of nuclear weapons is forbidden, then so is trade, and if trade is forbidden, then so production and possession.’¹²⁷

A number of decrees have been issued on the Sunni side too. These include the 2009 *fatwā* by Egyptian Grand Mufti Ali Juma’ā, who deems the possession of nuclear weapons ‘with the intent to deter’ to be ‘permitted, which actual use is highly conditioned (if permitted at all).’ In other words, the Grand Mufti ‘does not lay out the circumstances under which WMDs could be legitimately employed, but he does not rule out their use absolutely.’¹²⁸ This *fatwā* aims to offer a counter-argument to ‘those “other scholars,” who had stated that the legal evidence indicates that WMDs can be used against “un-Islamic nations”. Their view is fallacious and based on “false analogies” between the different legal situations of wartime and peace.’¹²⁹ Likewise, the chairman

¹²³ ‘Communication dated 12 September 2005 from the Permanent Mission of the Islamic Republic of Iran to the Agency’ (INFCIRC/657). IAEA.org. 12-09-2005.

¹²⁴ ‘Message to the first international conference on disarmament and non-proliferation’. Khamenei.ir. 16-05-2010.

¹²⁵ Ayatollah Fazel-Lankarani, ‘Eighth International Conference on Imam Khomeini’s Foreign Policy: Islam and the Non-proliferation of Weapons of Mass Destruction’. 2-06-2014.

¹²⁶ Gleave, Robert, ‘Nuclear Fatwas’, LIVIT Blog. 24 June 2010.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

of the International Union of Muslim Scholars, Yusuf al-Qaradawi, argues that the use of indiscriminate weapons is banned by the faith. Referring to the Prophet's behaviour during wars, he notes that, 'you should not kill those who have not killed and have nothing to do with the war'. Nevertheless, al-Qaradawi presents similar arguments as Juma'ā, noting that the Muslim community is called upon by the faith to acquire these weapons for deterrence, if others possess them and threaten to use them. If the *Ummah* fails to acquire these weapons,' he explains, 'it becomes weak and subject to threats, in particular by the Zionist enemy, which has taken the Muslims' land and the holy places.'¹³⁰ Sa'd bin Abdullah al-Hamid concurs that the possession of WMD may be necessary to deter the adversary and preventing it from coercing Muslims. He explains that deterrence, as a political and military principle, is used in states' defence doctrines. The possession of nuclear weapons is then required for Muslims states. However, he also agrees that the use of these weapons is prohibited by the faith, but adds a caveat: These weapons should never be used, unless all other options have been exhausted. He also highlights the 'prestige' factor in the possession of nuclear weapons. As such, he argues that Muslims should never enter treaties prohibiting the 'possession, manufacturing, or production' of these weapons so long as others continue to develop, stockpile, and possess them. This, he adds, would force Muslims into submission.¹³¹ Sheikh Ali Nasser challenges the idea that the production of WMD can be justified under Islamic law. He notes that the production of such weapons can endanger the environment. For this reason, it is prohibited under Islamic law.¹³² Lastly, the Dar al-Ifta in Egypt (the official clerical body in the country) has issued an edict 'requiring Islamic states to acquire these WMD as a tool of deterrence'.¹³³ The decree calls upon Muslims both to prepare to stand against and to deter the adversary, who possesses WMD, by acquiring all such weapons. All these decrees calling for Muslims to 'be prepared' by acquiring WMD are based on *Qur'an* 8:60, discussed previously, which tells Muslims to, 'prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy'.¹³⁴

¹³⁰ Al-Qaradawi, Yusuf, 'Doctrinal issues – weapons of mass destruction, 'the rule of possession and use', International Union of Muslim Scholars official Facebook page.

¹³¹ Bin Abdullah al-Hamid, Sa'd, 'The rule of law in the use of weapons of mass destruction', January 2008, Alukah.

¹³² Nasser, Ali, 'Weapons of mass destruction from the perspective of Islamic jurisprudence', 2-03-2015, al-Sarat.

¹³³ 'Al-Fatwā 646', Dar al-Ifta Al-Missriyyah, 28-05-2009. Dar-alitfa.org. Translation by Karim Kamel.

¹³⁴ *Qur'an*, 8:60

Others, including several Sunni Sheikhs at al-Azhār,¹³⁵ along with jihadists rationalise the legality of the possession of WMD:

A Muslim's duty to "defend one's soul," to achieve military superiority over the enemy, to maintain reciprocity—at least—in types of weapons, to deter the enemy, or to "make the enemies of the ummah tremble." Hence, no type of weapon is, by definition, illegal.¹³⁶

This group also justifies the use of WMD through *lex talionis* – an integral part of Islamic law¹³⁷ – with the reasoning that if CBRN weapons are used against Muslims, then the *ummah* can retaliate, by means of the same weapon. In the words of Bar, 'the Sheikh of al-Azhār, Muhammad Tantawi, drew an analogy from the ruling of the Caliph Abu Bakr (573-634): "to fight the enemy with a sword if he fights with a sword and...with a spear if he fights with a spear"'. He argues that if Abu Bakr lived in the contemporary world, he would consider it the duty of Muslims to retaliate against the use of nuclear weapons against fellow Muslims by launching an attack using the same weapon.¹³⁸ This complements the Qur'anic verse, 'And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed.'¹³⁹ It is important to distinguish between the Sunni position on Abu Bakr's authority, as the first caliph and an undisputable authority and the Shiite one, in which the first Imam, Ali, sets the example to follow rather than Abu Bakr.

Saudi cleric, Shaykh Naser bin Hamad al-Fahd issued the first *fatwā* on the use of WMD on 21 May 2003, rejecting international law, as a non-Islamic framework, and basing his claims on two *aḥādīth* from Muhammad. 'Allah has ordered you to do everything perfectly. Hence, if you kill, do it perfectly, and if you slaughter, do it perfectly. Everyone should sharpen his blade and ease his slaughter.' And 'If you are ordered to do something-do it according to your best ability'. He asserted that 'if the Muslims could defeat the infidels only by using these kinds of weapons [WMD], it is allowed to use them even if they kill them all, and destroy their crops and cattle.' Hence, al-Fahd argued that, 'Muslims should act according to their abilities. If there is

¹³⁵ Al-Azhar University is located in Cairo and is considered as one of the foremost schools for Islamic teaching.

¹³⁶ Bar, Shmuel (2006), 70

¹³⁷ It must be noted that the *Qur'an* defines *lex talionis* as a source of life for the other. This idea holds its source in the *Qur'an* 2:179, which reads: 'And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.'

¹³⁸ Bar, Shmuel (2006), 71

¹³⁹ *Qur'an*, 16:126

no other way, the Mujahideen can defeat the enemy by every means possible. This principle is valid even if they have to kill women and children, or even Muslims.¹⁴⁰

Several *fatāwā*, issued by jihadists promoting or committing acts of terrorism and Sunni authorities alike, address the question of the legality of the possession, stockpiling, and use of nuclear weapons in the greater framework of CBRN weapons. Some take the prohibition of such weapons for granted, stating that the killing of non-combatants and the potential killing of Muslims of distinguishing between belligerents and civilians, due to the impossibility with such an arsenal, are *ḥarām*, under Islamic law. This is the case of those Iranian clerics,¹⁴¹ who have expressed their views regarding WMD, such as Grand Ayatollahs Montazeri, Sāne'i, and Makarem-Shirazi.¹⁴²

Two of Al-Qaeda's most influential leaders, Osama bin Laden and Ayman al-Zawahiri issued an infamous *fatwā* on 23 February 1998, which sheds some light on the organisation's position on the use of CBRN weapons. In this *fatwā*, they identified three justifications for Al-Qaeda's acts of terrorism, urging other Muslims around the world to take part in them. The first justification presented by the terrorist organisation's mastermind is that, 'the United States has been occupying the lands of Islam in the holiest places', of which he sees the humiliation of the people of the Arabian peninsula and the occupation of Iraq as the greatest examples. The second rationalisation lies in what they call the 'crusader-Zionist alliance'. Lastly, this American support for Israel, they argue, leads to 'religious and economic' wars, of which the aim is to preserve 'the Jews' petty state and divert attention from its occupation of Jerusalem and murder of Muslims there'. This in turn further pushes Washington to 'endeavor to fragment all the states of the region such as Iraq, Saudi Arabia, Egypt, and Sudan into paper statelets and through their disunion and weakness' represents the final reason to wage war against the United States. These three reasons are at the heart of Al-Qaeda's attempts to justify the killing of 'Americans and their allies – civilians and military – as an individual duty for every Muslim.'¹⁴³ Yet, neither bin Laden nor Zawahiri have the religious authority to

¹⁴⁰ Paz, Reuven (2005). 'Global Jihad and WMD: Between Martyrdom and Mass Destruction'. *Current Trends in Islamist Ideology*, Vol. 2. PP. 74-86. Hudson Institute: Center on Islam, Democracy, and the Future of the Muslim World. 79

¹⁴¹ The deaths of prominent Shiite authorities, including Grand Ayatollahs, Khomeini, Golpaygani, and Shariatmadari, opened the door for the 'religio-politicians' to become more prominent.

¹⁴² 'Barkhi motaghedand team-e mozakere tamami-e kartha-ye barande ra masraf karde ast/dar tavafoogh che dade v ache gerefteim?', MehrNews. 18-12-2013.

¹⁴³ Al Qaeda's Fatwā (1998)

issue a *fatwā*, as neither of them has a status of jurisconsult or any authority in the Islamic tradition.

Zawahiri raises key Quranic themes to justify the use of WMD, to include: the legality of killing women, children, and the elderly, the use of Muslim shields, the inevitability of environmental destruction, notions of retaliatory use and deterrence, attacking in the night and unintentionally harming noncombatants, among other such issues. Indeed, not only are the same scholars, clerics and quotations recounted an “Exoneration,” but many of the same examples are used nearly verbatim, including the Prophet’s reported sayings in the context of night raids and the harming of noncombatants, as well as the Prophet’s attack on the village of al-Ta’if using a catapult-thereby permitting the use of weapons of “general destruction” incapable of distinguishing between innocent civilians and combatants.

He offers a meticulously researched case to support the judgment that using weapons of mass destruction should be judged on intent rather than results.¹⁴⁴

While Shiite-issued decrees indicate a consensus on the stance of Shiite jurisprudence on WMD, Sunni edicts show a wide variety of positions on the topic. For the most part, Shiites agree that the production, possession, and use of nuclear weapons are unethical and illegal in terms of the faith. Sunni views, however, range from a complete prohibition, similar to the Shiite stance, to complete legality of the production, possession, and use of these weapons. Many mainstream Sunni clerics fall into the first category or argue that the possession is allowed, while the use of nuclear weapons is either unethical, or illegal, or both. As indicated above, at the core of these discussions lie similar considerations to those in international law, including proportionality and distinction.

Many have argued that these edicts do not matter, because they do not impact on policy. In reality, these critics are looking at the problem upside down. Indeed, these rulings may not influence decision-making, but they certainly reflect the actor’s ambitions and policies. Indeed, the edicts issued by Al-Qaeda’s leadership were a good indicator that the network would not refrain from using disproportionate and indiscriminate means and methods against the West. The Iranian edict supports the findings of the U.S. intelligence community: Tehran has not decided whether to acquire a nuclear weapon.

¹⁴⁴ Mowatt-Larssen, Rolf (2010), 35

The Supreme Leader's ruling is fairly vague on the production and possession of these weapons, mirroring his seeming lack of certainty on the matter. What seems to be clear, however, is that the country is willing to close the door to the use of these weapons for itself. As discussed further in the chapter on Iran, this is underlined by the country's acquisition of chemical weapons during the Iran-Iraq War and its red-line on their use.

Other sources and relevant legal notions

Other minor sources of Islamic law include *istihsān* or the preference of jurists, the more controversial *'aql* or reason, and *ra'y* or the jurist's opinion.¹⁴⁵ The notion of *'aql*, as a means of interpreting the *shari'a* is only accepted in certain Islamic schools of thought. For instance, while for Shiites it is a source of law, other beliefs, such as Wahhabism, fully reject it. According to Shiite Islam, a prescription under *shari'a* must be confirmed by *'aql*. In other words, said prescription must be in accordance with reason. It is further believed in all schools of Islamic thought that God does not prescribe anything that would be against reason. However, in order for humans to understand His prescriptions, they must use reason (insofar as it is a 'sane' reason) in the Shiite tradition.

In addition to the major and minor sources of *shari'a*, some specific notions are worth considering. One of these notions has come into being due to the rigid nature of *shari'a* and its inability to change and evolve to adapt, which is the concept of *hīlah* or ruse. *Hīlah* does not have an equivalent in either the modern international legal framework, or any other modern western domestic legal system. Indeed, the notion was developed to enable deviation from the rigid, explicit norms incepted by the *Qur'an* and *Sunnah*. However, the stricter schools of thought, including the Hanbali school, are opposed to the idea of deviating from the prescriptions of the *Qur'an* and condemn the use of *hīlah*. Therefore, while the notion certainly provides an answer to the question of the evolution and adaptation of the Islamic system, its application has been quite limited. Exceptions under international law seem to serve the same purpose as *hīlah* to some Muslims states, which sign and ratify international legal instruments, by providing exceptions where the provisions are contrary to Islamic law.

¹⁴⁵ Zubaida, Sami (2003), 12

A notion that has become increasingly debated in the west, especially in the context of the Iranian nuclear programme and Khamenei's decree as evidence to its peaceful nature, is that of *taqiyya*. The word *taqiyya* can be translated as 'keeping' or 'hiding' and, in the Islamic legal sense, signifies saying or doing something against one's belief for a particular reason in an exceptional circumstance. In other words, *taqiyya* is 'keeping' oneself from being hurt by asserting agreement with one's adversary in words or deeds, in breach of the truth.¹⁴⁶ Therefore, in order for the believer to be able to justify said statements or deeds, he needs to be in exceptional circumstances, where his life, freedom, or property is in danger. While *taqiyya*'s primary function is to avoid the individual from suffering as a result of his beliefs, the notion also has a communal dimension, which aims to protect Islamic unity (*wahda*), preventing division and conflict within the community.¹⁴⁷ *Taqiyya* holds its foundation in several verses of the *Qur'an* and in several *aḥādīth*, especially Shiite *aḥādīth*. The reason why the notion has developed more in the Shiite tradition can be found in the circumstances unique to this branch of the faith, making it historically more vulnerable. Shiites have historically been prosecuted and given that they constitute a minority within the *ummah*, they have had to protect themselves accordingly and ensure their survival. Consequently, Shiite Imams found it imperative to use *taqiyya* to avoid the dispersion or demise of the Shiite community. Nevertheless, *taqiyya* remains an Islamic notion, not merely a Shiite one. *Taqiyya* is not limited to believer-unbeliever relations, but also those of Muslims with each other. It is even argued that *taqiyya* goes beyond the Islamic faith, holding its roots in examples set by monotheistic prophets and key historical believing figures. These include Abraham in his attitude towards the unbelievers, that of Joseph with his brothers in Egypt, the secret prayers of Asiya bin Muzahim, the Pharaoh's wife, as well as Moses' response to the Pharaoh.¹⁴⁸ It is therefore argued that *taqiyya* is not only prescribed by religion, but also by reason or *aql*. Nevertheless, it can also be *ḥarām* as in cases that would undermine the very foundations of the religion, such as that of the *Qur'an*, the destruction of the Mecca, or deeds leading to murder and bloodshed.¹⁴⁹ Some *mujtahidin* go further by prohibiting *taqiyya* altogether, except in cases of absolute necessity.

¹⁴⁶ Sobhani in *Great Encyclopedia Islamica* (*Taqiyya* sub verbum), 1

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, 3

¹⁴⁹ *Ibid.*, 4

Several *āyāt* address the issue of *taqqiya*. One of the foremost verses in which *taqiyya* is prescribed and its benefits identified recounts the story of some of the Pharaoh's followers, who suggested killing Moses,

And a believing man from the family of Pharaoh who concealed his faith said, "Do you kill a man [merely] because he says, 'My Lord is Allah ' while he has brought you clear proofs from your Lord? And if he should be lying, then upon him is [the consequence of] his lie; but if he should be truthful, there will strike you some of what he promises you. Indeed, Allah does not guide one who is a transgressor and a liar."¹⁵⁰

In another *āyah*, it is provided that, 'whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.'¹⁵¹ This is because, 'Allah intends for you ease and does not intend for you hardship'¹⁵² and 'strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty.'¹⁵³ Therefore, spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allah loves the doers of good.'¹⁵⁴

Taqiya is also justified in a number of *aḥādīth*. According to Shaykh al-Mufīd, if one fears for one's life, one is required to perform *taqiyya*, making *taqiyya wājib* or obligatory. In the case of fear for one's property, it is *mubāh* (neither recommended nor forbidden).¹⁵⁵ According to *aḥādīth* and *fatāwā*, *taqiyya* becomes imperative or *wājib* in grave cases, such as fear for one's own life, or the life of one's family and close friends. Therefore, it is merely applicable in the realm of individual and private affairs.¹⁵⁶

The applicability of *taqqiya* to the nuclear debate has been debated in the west. Some have raised questions regarding the applicability of the notion to the Iranian stance on nuclear weapons. They argue that escalations between Tehran and Israel, as well as the threat of a war between the two countries, which would put the very existence of the Islamic Republic at stake, could justify use of the notion of *taqiyya*. In this case, the reasoning is that, *raison d'État* could make *taqiyya wājib*. In that sense, the notion of *maslahat* can be compared to state secrets.¹⁵⁷ However, several arguments can be presented to counter these claims. First, the application of the notion of *taqiyya* to the

¹⁵⁰ *Qur'an*, 40:28

¹⁵¹ *Ibid.*, 2:173

¹⁵² *Ibid.*, 2:185

¹⁵³ *Ibid.*, 22:78

¹⁵⁴ *Ibid.*, 2:195

¹⁵⁵ Sobhani in *Great Encyclopedia Islamica* (*Taqiyya* sub verbum), 4

¹⁵⁶ *Ibid.*

¹⁵⁷ *Arcana imperii*

public sphere, especially in the context of modern international affairs, is complicated and problematic. Indeed, the application of *shari'a* to modern security issues is that the Islamic framework is an inherently private one, therefore, lacking a substantial theoretical structure. Second, some Shiite clerics believe that *taqqiya* is not longer relevant and should no longer be resorted to, as it was developed to ensure the continuity of the *ummah* in times when its existence was in danger.¹⁵⁸ Third, *taqqiya* is only permissible in the case of threat to life. Fourth, according to Iranian Shiite cleric, Mohsen Kadivar, *taqqiya* is not allowed in 'public religious matters' and, quoting Khomeini, he argues that religious authorities are prohibited from resorting to *taqqiya* altogether.¹⁵⁹

The notion of *bīd'ah* is also relevant to the nuclear debate in the context of the emergence of the idea of *raison d'État*. The term, converse to *sunnah*, means innovation, seen as reprehensible in the faith. A quote attributed to the Prophet provides that, 'the worst things are those that are novelties; every novelty is an innovation, every innovation is an error and every error leads to hell-fire.'¹⁶⁰ As noted by Bernard Lewis: 'In its extreme form this principle meant the rejection of every idea and amenity not known in Western Arabia in the time of Muhammad and his companions'.¹⁶¹ This rejection of innovation as inherently erroneous has 'been used by successive generations of ultra-conservatives to oppose tales, sieves, coffee and tobacco, printing-presses and artillery, telephones, wireless, and votes for women.'¹⁶² Mainstream Islamic schools of thought distinguish between 'reprehensible' and permitted innovations. Hence, Muslims have been able to adopt many innovations, which were not known and therefore endorsed by the *sunnah*. 'But these innovations of doctrine and practice were always restrained and modified by the actions of *ijma*', and from time to time drastically curtailed by a wave of religious conservatism.' Therefore, while innovations can be viewed as good, they are generally viewed as bad unless otherwise specified.

The principle of distinction, which is clear-cut under the laws of international armed conflict, is rather intangible under *shari'a*, even though it is as crucial in the second as in the former. Indeed, the main reasoning behind the prohibition of nuclear weapons

¹⁵⁸ INT003SNT

¹⁵⁹ *Ibid.*

¹⁶⁰ Lewis, Bernard (1973), *Islam in History: Ideas, Men and Events in the Middle East*. Bradford: Watmoughs Limited. P. 226

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

under *shari'a* is held in the fact that nuclear weapons are inherently non-discriminative. This view takes for granted that the killing of innocent civilians is prohibited under Islamic law. However, breaches of the principle of distinction and instances of massacre of noncombatants can be found in the history of various Islamic civilisations. This was certainly the case of the Crusades, but can even be traced back to the lifetime of the Prophet himself. The foremost example of the flexibility of the notion of distinction can be found in the case of the expedition of Bani Quraiza. The expedition was led during the Prophet's lifetime and under his command. In response to the tribe of Bani Quraiza breaking its truce with Muslims, the Prophet allowed for hundreds of the tribe's men to be executed, and for the women, children, and their property to be divided among the Muslims, calling this 'God's will'.¹⁶³ The expedition sheds light on the ideas of distinction, collateral damage, and collective guilt in Islam, and their relation to the interests of the Muslim community.

Where a tribe was at war with the Muslims, however, or had no agreement, they had no obligations towards it even of what we would call common decency. If contemporaries showed some surprise at the execution of all the males of Qurayzah, it was because Muhammad was not afraid of any consequences of such an act; the behaviour of Qurayzah during the siege of Medina was regarded as having cancelled their agreement with Muhammad. Similarly, the terms of the treaty of al-Hudaybiyah had been broken by the Meccans before Muhammad denounced it, and the individuals who were assassinated had forfeited any claim to friendly treatment by Muhammad through their propaganda against him.¹⁶⁴

Nevertheless, Muslim scholars justify taking women and children as a willingness to help those who are not viewed as apt to help themselves. Furthermore, in the Islamic doctrine of *jihad*, it is taken for granted that all men of age are belligerents. Therefore, distinction is based on gender and age, rather than whether or not one takes part in combat. As such, a *ḥadīth* commands Holy Warriors to 'Go in the name of God and in God and in the religion of the Prophet of God! Do not kill the very old, the infant, the child, or the woman. Bring all the booty, holding back no part of it. Maintain order and do good, for God loves those who do good.'¹⁶⁵ Another one highlights the prohibition against killing children: 'Do not kill children! Do not kill children! Every soul is born with a natural disposition [to the true religion] and remains so until their tongue gives

¹⁶³ Tabatabai, Allameh, Vol. 16, 451

¹⁶⁴ Watt, Montgomery (1956), 327-328

There are differences and similarities between the notion of pre-Islamic Arab tribes and the *ummah*. The notion of *ummah* is essentially based on tribes. Yet, 'the outstanding difference is that the *ummah* was based on religion and not on kinship'. Hence, 'God is the head and director of the *ummah*'

Ibid., 239

¹⁶⁵ Al-Muttaqui, *Kanz al-'Ummal*, ii, pp. 252-286 in Lewis (1974), vol. 1

them powers of expression. Then their parents make Jews or Christians of them.¹⁶⁶ Likewise, the Prophet further stresses the importance of the immunity of both women and children, stating that ‘He [God] has forbidden the killing of women and children.’¹⁶⁷

In addition to distinction based on gender and age, *shari’a* also distinguishes between believers and non-believers, and within that, Muslims having left the faith or rebelling against. According to *fiqh* there are three categories of opponents in *jihad*. *Harbi kuffar* are those who bear arms to combat the Muslims. *Zemmi kuffar* are those who live in Muslim territories and pay taxes to do so without combating the Muslim state – insofar as these conditions are accepted, this category of infidels does not count as an opponent, however, if they bear arms against the Muslims, they become an opponent. *Baqi kuffar* are those who revolt against the infallible Imam or leader who cannot err.

A *ḥadīth* attributed to the Prophet further distinguishes people alluding to ethnicity: ‘Treat an Arab as an Arab and a half-breed as a half-breed. The Arab has two shares and the half-breed one.’

Summary

This section provided a survey of the different Islamic legal sources, used by Muslim scholars to extract divine laws, which shape the believers’ behaviour. It was noted that several factors make the Islamic legal framework an intricate and contradictory one. First, while Islam considers itself a universal religion, the faith is composed of two main branches and several schools of thought, with their own interpretations of the divine Word. The sub-branches of these schools of thought, shaped by different external factors, further complicate this. These factors include the local culture and traditions of the populations that adopt a given school of thought. Second, different Islamic legal sources may contain different rulings on a single issue. Hence, one source may seemingly allow something, which can be prohibited by another. Third, a given source can be contradictory, as illustrated by the case of the *Qur’an*, which encompasses verses, which can simultaneously allow or prohibit something. Fourth, Islamic law is primarily private and not fit to govern international affairs and the conduct of warfare in their modern form.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

Based on the sources examined in the chapter, the acquisition of nuclear weapons could arguably be viewed as justified and even encouraged under Islamic law, while their use is not clear cut. Indeed, using indiscriminate weapons in the context of an armed conflict could be justified under the faith but only under certain circumstances. Nevertheless, as discussed throughout the previous chapters, the use of indiscriminate means and methods of warfare is generally viewed as prohibited by the faith in the Shiite school of thought, while no single stance exists in the Sunni world. The notion of threat in its modern international legal sense does not exist in *shari'a*. The use of these weapons seems hardly justifiable under the faith, whether in Sunni or Shiite Islam.

Nuclear narrative and policy and the Islamic discourse

The following section provides an overview of the different positions held by Muslim states and non-state actors in the debate regarding the legality of nuclear weapons under Islamic law. The context and narrative is reviewed for each case and the similarities and differences in their discourses are also highlighted.

Iran's *ḥalāl* nuclear programme

Iranian authorities want the international community to take for granted the idea that the Muslim faith prohibits nuclear weapons and, more generally, WMD. According to the Iranian leadership, chiefly its Supreme Leader, Ali Khamenei, the reasoning behind this position lies in the failure of these weapons to distinguish between combatants and noncombatants. Yet, several issues overcast the discourse itself.

First, as noted previously, Ayatollah Khamenei is said to have issued a *fatwā*, prohibiting nuclear weapons. However, it remains unclear which of the production, possession, stockpiling, threat, or use of these weapons are governed by the so-called decree. Some documents, including the 2006 Communication to the IAEA, recognise the 'production, stockpiling, and use'¹⁶⁸ of nuclear weapons as the scope of this prohibition, while others are merely limited to their 'use'.¹⁶⁹

¹⁶⁸ 'Communication dated 12 September 2005 from the Permanent Mission of the Islamic Republic of Iran to the Agency' (INFCIRC/657). IAEA.org. 12-09-2005.

¹⁶⁹ 'Statements in the meeting with nuclear scientists'. Khamenei.ir. 22-02-2012.

Second, the gap between the original Persian statements and the very approximate, conflicting, and inaccurate translations provided by both Iranian and foreign media is tremendous. An example of the disconnect between the version presented to the international community and that targeting the Iranian audience can be found in the translation of one of Khamenei's speeches, provided by the Iranian government-sponsored English news channel, PressTV. The PressTV commentary claims that 'as far as [the Supreme Leader] is concerned, to possess nuclear arsenal or WMD is going against the faith.' In reality, the Ayatollah stated: 'we do not believe in the atomic bomb, in nuclear weapons, we won't pursue them. According to our principles, the principles set by our belief, our religious principles, the use of these instruments of mass murder is fundamentally prohibited, it is *ḥarām*.' The subtitles provided by PressTV, however, read 'our religious principles and beliefs forbid the acquisition and use of such weapons of mass destruction.'¹⁷⁰

A few years prior, the *San Francisco Gate* published an article, in which it quoted the Ayatollah as saying, 'in contrast to the propaganda of our enemies, fundamentally we are against any production of weapons of mass destruction in any form.' The same article quoted Grand Ayatollah Yousef Sānei stating that, 'there is complete consensus on this issue. It is self-evident in Islam that it is prohibited to have nuclear bombs. It is eternal law, because the basic function of these weapons is to kill innocent people. This cannot be reversed.'¹⁷¹ Likewise, late Grand Ayatollah Montazeri, had assessed shortly before his death that WMD were prohibited by the faith. This prohibition, as voiced by Montazeri, remains one of the most precise rulings on these weapons by an Iranian Shiite cleric.

Investing, producing, stockpiling, and using nuclear energy in weapon technology and the production of weapons of mass destruction' was prohibited. He had noted that the indiscriminate use of weapons of mass destruction was prohibited by both '*aql* and *shari'a*.'¹⁷²

Former President, Ali-Akbar Hashemi-Rafsanjani, had declared in 1988 – marking the end of the devastating eight year war with Iraq, during which chemical weapons were

¹⁷⁰ 'Imam Khamenei (HA)'s ruling on nuclear weapons and weapons of mass destruction.' Press TV. 22-12-2010. Last accessed 27-02-2013.

¹⁷¹ Collier, Robert (2003)

¹⁷² 'Estefta az Ayatollah al-ozma Montazeri darbare-ye sarmaye gozari va be kar giri energy-e haste-I dar fanavari-e taslihati.' Kadivar.com. 14-10-2009.

used by Baghdad – that ‘chemical bombs and biological weapons are poor man’s atomic bombs and can easily be produced. We should at least consider them for our defense.’¹⁷³ In 2010, he stated ‘curiosity, the need to defence and deterrence, and above all, greed in some human beings and societies have unfortunately led them to step on a path’ where they would hurt the health and life of their own kind.¹⁷⁴

A number of Iranian officials and clerics assert that Ayatollah Khomeini had made the decision not to use chemical weapons against Iraq in retaliation for Baghdad’s use of such weapons because he viewed them as un-Islamic. According to Kadivar, the founder of the Islamic Republic would not even allow the bombing of Iraqi cities, while Baghdad was bombing Iranian towns and cities.¹⁷⁵ Former Iranian ambassador to the IAEA also quotes the first Supreme Leader saying that, ‘if states continue the pursuit of nuclear weapons, the world will go toward destruction [...] All people must get up and become aware. Intellectuals and scientists should stand behind non-proliferation.’¹⁷⁶ More specifically, Mohsen Rafighdoost, former Minister of the Revolutionary Guards, quotes Khomeini as asserting the prohibition of nuclear weapons under Islamic law: ‘Imam [Khomeini] said don’t go after nuclear weapons. He said they are *harām*. We [some of the revolutionaries] wanted nuclear weapons.’¹⁷⁷

Pakistan’s Islamic bomb

A contrasting example from the Iranian case is that of neighbouring Pakistan, also a self-proclaimed Islamic Republic, albeit of a different nature. Pakistan provides the most interesting counter-example to the Iranian narrative, one that the Iranian leadership has conveniently failed to address. Pakistan has developed a nuclear weapons programme, comprised of both strategic and tactical nuclear weapons, outside of the NPT framework and had stockpiled 90 to 110 nuclear warheads as of 2011.¹⁷⁸ Pakistani leaders never engaged in an Islamic legal debate, and have not attempted to provide a

¹⁷³ ‘Iran’s Chemical and Biological Programmes’. *Iran’s Nuclear, Chemical and Biological Capabilities: A Net Assessment*. London: IISS (2011)

¹⁷⁴ ‘Hashemi Rafsanjani: Combat against chemical and biological weapons with deeds not with speeches’. *JARAS*. 28 June 2010.

¹⁷⁵ INT003SNT

¹⁷⁶ INT008SNT

¹⁷⁷ ‘Khatere-ye Rafighdoost az Emam darbare-ye lane-ye jasoosi: “anja male Amricast”/dolat yazdahom moteadel nist, yavash yavash be chap mizanad/towhin-e Ahmadinejad be marajeh’. *Mehr News*. 25-01-2014.

¹⁷⁸ ‘Pakistan.’ Country profiles. *The Nuclear Threat Initiative*. Updated July 2012.

justification for the country's programme under *shari'a*. However, Islam played a defining and enabling role in Islamabad's nuclear narrative. Indeed, while Iran claims that nuclear weapons are prohibited by the faith, thus presenting it as a limiting factor, Pakistan presented its programme as an opportunity, not only for the country, but also for the Muslim world as a whole. As presented by Pakistan, the acquisition of nuclear weapons by the Muslim world would put it on an equal footing with 'the Christian, Jewish and Hindu civilizations,' as well as the 'communist powers.'¹⁷⁹ Hence, the Pakistani government claimed it was attempting to produce an 'Islamic bomb' rather than a 'Pakistani bomb'. Pakistan could fund the development of a nuclear weapons programme thanks to the donations of Muslim populations, including Saudi Arabia. Thus, 'Pakistan received several billion dollars in donations from Muslim and Arab nations during the mid-1970's'.¹⁸⁰

Al-Qaeda's Nuclear Ambitions

Since the mid-1990s, and especially since 9/11, a widespread discussion in the policy world and an extensive body of scholarly literature has appeared regarding the potential access to, and use of, CBRN weapons by terrorist organisations. This idea holds its roots in attempts made by Al-Qaeda's leaders to justify such an attack and to encourage their fellow *jihadists* to conduct it, as well as discussions on radical Muslim forums concerning methods of production of CBRN weapons, including nuclear weapons. The general consensus among experts seems to be that terrorists that exploit religion in pursuit of their goals tend to be more willing-and therefore likely-to violate traditional moral taboos against the use of CBRN weapons than their secular counterparts.¹⁸¹ Jihadists have 'called for an attack on nuclear sites, such as power plants, nuclear reactors, and storage facilities for strategic weapons. The call included publication of information and maps of nuclear facilities belonging to NATO'.¹⁸² From an Islamic legal perspective, such an attack would not be different from a direct attack using CBRN weapons, as it could lead to the death and injury of a large number of people, combatants and civilians alike, regardless of age, gender and religious belief. As illustrated by Al-Qaeda's previous assaults, this lack of distinction has never been a concern to the organisation, which justifies its attacks under *shari'a*, using *Qur'anic*

¹⁷⁹ Armstrong, David (2007), 32

¹⁸⁰ *Ibid.*, 37

¹⁸¹ Maurer, Stephen (2009), 21

¹⁸² *Ibid.*, 42

verses, as well as *fatāwā* issued by the terrorist entity's leadership. Al-Qaeda's rationale is found in the 'west's role' in the 'oppression' of Muslims.¹⁸³ Philip Bobbitt notes that Al-Qaeda's rationalisation for the killing of civilians lies in the fact that, 'the American people are the ones who choose their government by way of their own free will, a choice which stems from their agreement to its policies. Thus, the American people have chosen, consented to, and affirmed' the U.S. foreign policy in the Muslim world, making the nation as a whole a legitimate target.¹⁸⁴ Therefore, as discussed in the following chapter, the network made attempts to procure uranium in 1993.¹⁸⁵ Several Saudi clerics issuing *fatāwā* in support of the use of WMD had been requested to do so by Al-Qaeda, in an attempt to provide the terrorist organisation's position with more legitimacy. These include the 2003 *fatwā* issued by al-Fahd authorising Muslims to use WMD.

III. Conclusion

Are the production, possession, stockpiling, threat, and/or use of nuclear weapons tolerated, allowed, or prohibited under Islamic law? As shown in the previous chapter, the response is not clear in the context of international law, where the issues of nuclear arms control, non-proliferation, and disarmament have been widely discussed since the creation of the atom bomb and its uses in combat during the Second World War. As discussed throughout Chapter Two, this is due to a lack of a political will, which has prevented the debate from developing beyond its embryonic stage on a practical level, while it has been thoroughly discussed in academia and policy circles. States with the ability to play a key role in shaping legislation and policy with respect to nuclear arms control and disarmament are also major stakeholders. They continue to rely on their nuclear postures as a chief element of their defence and foreign policy. Against this backdrop, it is not surprising that the Islamic faith does not provide a single, clear, and explicit answer to this question. As noted in this chapter, *shari'a* can be categorised mainly as private law, making it a limited system, addressing certain issues. This is especially the case regarding technological progress, including the development of weaponry, which cannot be governed by the faith in the same manner as in international law. As noted in Chapter Two, international humanitarian law is designed to evolve and

¹⁸³ Bobbitt, Phillip (2009), 80-81

¹⁸⁴ *Ibid.*, 81

¹⁸⁵ Rahamim, Noam (2009), 41

apply to new technological developments in warfare.¹⁸⁶ This is the product of over one hundred years of focused development in a particular legal field. These nuances are established by lawyers specialising in this particular strand of international law, rather than traditional Islamic clerics, with an opinion on all and no real expertise on any social, scientific, ethical, political, and legal matters, ranging from personal hygiene issues to the conduct of warfare.

Nevertheless, while the pursuit of knowledge is highly regarded in the Islamic tradition,¹⁸⁷ and technological and military innovation constitutes an important endeavour, the development of the law to govern these scientific and technological advances is not a requirement. This is a shortcoming of a stagnant religious framework, which is addressed in modern international law. Furthermore, not only do different schools of thought within the Islamic faith offer different answers, different clerics belonging to the same school of thought also seem to have divergent interpretations of the Word of God and the teachings of the Prophet and his successors. The Shiite stance on the possession of nuclear weapons remains vague, but most Shiite authorities, having expressed their views on the matter, seem to agree that the production and possession of nuclear weapons are not allowed by the faith. Sunni scholars seem to have divergent views. Many believe that the faith not only allows but also encourages Muslims to be 'prepared' and to develop nuclear weapons to deter the enemy. Others are closer to the Shiite position and challenge this view, but state that even the production of these weapons is prohibited. The notion of threat was not discussed in this study, as it does not appear in any of the Islamic legal sources. This is due to the fact that the notion of threat as a legal concept is relatively new, exclusive to modern legal systems, and as such, remains a gray area in Islamic law. The use of nuclear weapons constitutes perhaps the most important yet challenging question of all. The question of whether this use would be in response to a war launched against the *ummah* or as first strike is of key importance. Furthermore, scholars have qualified the indiscriminate use of fire against the enemy and the flooding of the enemy's territories and camps as *makrūh*; the use of poison as *ḥarām*; the killing of women and children, even if they assist the enemy, as

¹⁸⁶ Davison, Neil. 'How International Law Adapts To New Weapons and Technologies of Warfare.' *InterCross*. 04-12-2012.

¹⁸⁷ *Qur'an*, 20:114: 'So high [above all] is Allah, the Sovereign, the Truth. And, [O Muhammad], do not hasten with [recitation of] the Qur'an before its revelation is completed to you, and say, "My Lord, increase me in knowledge."

prohibited.¹⁸⁸ Yet, in Iran, there seems to be a consensus among Shiite jurists who have expressed their opinion on the matter that the use of such weapons is prohibited by the faith. No such consensus exists among Sunni scholars.

Ultimately, the legal debate is unlikely to be settled, not only because of its lack of clarity, but also due to a general lack of a scholarly discussion around the topic. Very few clerics have engaged in the debate and expressed their views. Those who have taken a stance on the matter have generally done so due to the political nature of the topic. This also means that the ethical and legal discussion is shaped by politics, rather than the opposite. In fact, while we often hear statements seeking to convince us one way or the other, the foundations of these claims are scarcely discussed. However, whether or not the Islamic faith truly allows or prohibits nuclear weapons is not as significant as the discourse that is shaped around the legal debate. For all its rigidity, the Islamic legal framework is ambiguous and thus flexible enough to be moulded into any position. As such, *shari'a* can be presented as a limiting factor, as in the case of Iran's nuclear narrative, or an enabling one, as in the case of Pakistan's nuclear weapons programme or Al-Qaeda's nuclear aspirations (albeit differently). The three following case studies build on this argument and demonstrate that the political circumstances and interests of each state are the main drivers behind the way the Islamic discourse is fashioned. As will be seen in the second part of this study, only Al-Qaeda finds itself rigorously bound by its Islamic narrative, one developed around the principle of the 'obligation' of Muslims to develop a nuclear weapon capability. Pakistan and Iran, however, present much more nuanced and instrumentalist approaches. This difference stems from the fact that while Al-Qaeda is a violent non-state actor, Pakistan and Iran are state actors pursuing their interests. The discourse serves as a vehicle promoting these interests but can also have other implications and costs. Once an actor defines its nuclear programme or ambitions in Islamic terms, it can only reverse its position at great political cost.

What impacts national, regional, and international security is not the outcome of this legal debate but rather the way in which it is utilised to promote a given actor's interests. Indeed, *shari'a* as a legal system that transcends time and space takes precedence over other national and international legal frameworks. Hence, when it is implemented in a country, other laws become secondary, including international norms,

¹⁸⁸ *Great Encyclopedia Islamica (jihad)*, 21

which are supposed to take precedence over particular laws. Hence, nuclear arms control and the inception and improvement of an international legal system and its supporting international institutions have a far more intimate relationship in the west than they do in countries where Islamic law is implemented. This is why former Iranian Chief Negotiator and President Hassan Rouhani, stated ‘This fatwa [Khamenei’s on the prohibition of nuclear weapons] is more important to us than the NPT and its Additional Protocol, more important than any other law.’¹⁸⁹ Naturally, if an Islamic norm is contradicted by an international piece of legislation, the former will be implemented and the second ignored. The next chapters assess the religious nuclear discourses of Al-Qaeda, Pakistan, and Iran in the context of their respective nuclear aspirations. Furthermore, the challenges presented to the nuclear non-proliferation regime, a potential future nuclear disarmament process, and other specific policy implications are identified.

¹⁸⁹ Sahimi, Mohammad. ‘Q&A - Former Iran nuclear negotiator: Bush negotiation bid was rebuffed’. 12-05-2012.

Chapter Four: Al-Qaeda's nuclear ambitions

Bruce Hoffman defines terrorism, 'as the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.' As noted by Hoffman, 'terrorism is specifically designed to have far-reaching psychological effects beyond the immediate victim(s) or object of the terrorist attack.' Its aim is to 'instil fear within, and thereby intimidate, a wider "target audience" that might include a rival ethnic or religious group, an entire country, a national government or political party, or public opinion in general.' In fact, 'terrorism is designed to create power where there is none or to consolidate power where there is very little.' Hence, 'through the publicity generated by their violence, terrorists seek to obtain the leverage, influence, and power they otherwise lack to effect political change on either a local or international scale.'¹

Al-Qaeda's leadership has made a number of attempts to acquire a nuclear weapons capability and has developed a thorough narrative to justify its nuclear ambitions in Islamic terms. The nuclear discourse is part of the organisation's greater pan-Islamic, or 'pan-Islamist', narrative. It is fashioned around the central idea of the unity of the 'House of Islam'. It seeks to mobilise Muslims, its target audience, in the struggle against the 'House of War'. This chapter analyses Al-Qaeda's nuclear discourse by placing it in the context of the organisation's broader narrative, formulated in Islamic legal and ethical terms, as well as the Muslim community's strategic interests. The question this chapter investigates is the following: What are the goals and impact of Al-Qaeda's Islamic nuclear discourse? The chapter concludes that the organisation has made a number of failed attempts to acquire nuclear weapons and has sought to justify these ambitions in Islamic terms, both legal and strategic. It has done so to rally its target audience, Sunnis worldwide, around the idea of an 'Islamist bomb'. The discourse seeks to motivate Muslims to support these endeavours, politically and financially, and to volunteer to join the group in its 'struggle' to restore an Islamic caliphate.

The chapter argues that Al-Qaeda's attempts to justify its nuclear ambitions in Islamic terms have been relatively successful. The organisation has convinced a number of its agents to try to pursue CBRN weapons and certain elements to provide it with enriched

¹ Hoffman, Bruce (2006), *Inside Terrorism*. New York: Columbia University Press. P. 40-41

uranium or warheads. However, despite the use of the religious discourse, no Muslim state is known to have officially endorsed these aspirations and assisted the group to obtain nuclear weapons. Additionally, while Al-Qaeda's leadership has successfully approached a number of individuals, including Pakistani nuclear scientists, these efforts have not been fruitful. Three main hypotheses can be presented to explain this failure. First, nuclear facilities and materials may be adequately secured. Developments in nuclear security, including Nuclear Security Summit (NSS) and the Global Threat Reduction (GTR)² initiative are further contributing to the security of nuclear materials. Hence, it has become increasingly difficult for non-state actors to procure nuclear weapons or materials. Second, the decline of Al-Qaeda core and the subsequent delegation of many of the group's activities to the affiliates have decreased the likelihood of a nuclear terror attack by the organisation. Third, the group's attempts to justify its actions in Islamic terms, whether legal or otherwise, to the Muslim world seem to have failed. As discussed further, even other Islamist terror groups have denounced the organisation's tactics. This, in turn, is due to several reasons enumerated in this chapter. Chiefly, most other terrorist groups and governments have little interest in supporting nuclear terrorism.

The chapter is structured around several key questions. First, to what extent is nuclear terrorism a threat to international peace and security and how has this threat been addressed internationally? Second, to what extent is Al-Qaeda's nuclear threat viable? In other words, why is Al-Qaeda perceived as the greatest nuclear terrorism threat? Third, what are the core arguments presented by Al-Qaeda core's leadership to justify the group's nuclear ambitions? Fourth, how are these arguments framed into the greater legal, moral, and strategic Islamic framework? Fifth, what purpose does Al-Qaeda's Islamic nuclear discourse serve? Lastly, how effective has the discourse been?

Nuclear terrorism as a security issue

Since the end of the Cold War, the nature of threats to international peace and security and our traditional understanding of the international security landscape have been challenged. This was especially the case with the 9/11 attacks. Prior to the fall of the

² The GTR initiative aims to minimise the threat of nuclear terrorism by reducing and repatriate nuclear and radiological materials located in various civilian facilities. The initiative further converts research reactors and isotope production facilities using highly enriched uranium to low enriched uranium. 'Global Threat Reduction Initiative', The National Nuclear Security Administration.

Soviet Union, state-actors were perceived as the main threat to each other and regional stability, and consequently international security. More specifically, the greatest threat to international peace and security during the Cold War lay in the use of nuclear weapons in a conflict between the United States and the Soviet Union. In 1962, the conflict between the two superpowers escalated, bringing them very close to a nuclear war in what has become known as the Cuban Missile Crisis. Even after the fall of the USSR, and until 9/11, the greatest threat seemed to be that of ‘all-out combat with the well-equipped armies of a modern state’. Since 9/11, however, ‘an entirely *new system* of warfare’ has changed conflict from ‘industrial-style fighting methods’ to ‘post-industrial warfare’.³ The nature of security challenges has evolved since the 1990s to encompass ‘a greater number of smaller, more amorphous sources, such as regional states in pursuit of regional political ambitions, inter-ethnic civil wars, and transnational threats from non-state actors particularly terrorism, narcotics, and crime.’⁴ Likewise, the possibility of the use of WMD by non-state actors has increased.

In 2004, the U.N. High-Level Panel on Threats, Challenges and Change Report identified terrorism as one of the key threats to international peace and security, with a particular focus on the role played by Al-Qaeda.⁵ ‘Attacks against more than 10 Member States on four continents in the past five years have demonstrated that Al-Qaida and associated entities pose a universal threat to the membership of the United Nations and the United Nations itself.’⁶

To borrow Walzer’s words, ‘in war, terrorism is a way of avoiding engagement with the enemy army. It represents an extreme form of the strategy of the “indirect approach.” It is so indirect that many soldiers have refused to call it war at all.’ Hence, ‘one might say that it represents the continuation of war by political means.’⁷ Therefore, with the advent of this strategy as a key means of engagement, ‘the “clash of civilizations” between “the West and the rest” predicted by Samuel Huntington is unlikely to take place exclusively – or even principally – on the battlefield’.⁸

³ Kalare, Michael, in Kegley, Charles (2003). *The New Global Terrorism – Characteristics, Causes, Controls*. Upper Saddle River, NJ: Practice Hall. P. 27

⁴ Cole, Benjamin (2011). *The Changing Face of Terrorism – How Real Is the Threat from Biological, Chemical and Nuclear Weapons?* London: I.B. Tauris. P. 11

⁵ ‘The United Nations High-Level Panel on Threats, Challenges and Change’, A/59/565 (2004), 47

⁶ Ibid.

⁷ Walzer, Michael (2006), 197

⁸ Stern, Jessica (1999), *The Ultimate Terrorists*. Cambridge: Harvard University Press. P. 5

The aforementioned U.N. High-Level Panel on Threats, Challenges and Change identified terrorism as one of six clusters of threats to international peace and security.⁹ The same report further identified CBRN weapons as another cluster of threats to the peace. Naturally, the combination of these two threats, namely CBRN terrorism, constitutes one of the foremost challenges to international peace and security in the twenty-first century.

In a speech delivered in Prague, U.S. President Barack Obama highlighted the importance of pursuing the ‘peace and security of a world without nuclear weapons’ as well as assuring the safety, security, and effectiveness of existing arsenals.¹⁰ The speech emphasised the significance of nuclear security and preventing nuclear terrorism.

We must ensure that terrorists never acquire a nuclear weapon. This is the most immediate and extreme threat to global security. One terrorist with one nuclear weapon could unleash massive destruction. Al Qaeda has said it seeks a bomb and it would have no problem using it. And we know that there is unsecured nuclear material across the globe. To protect our people, we must act with a sense of purpose without delay.¹¹

The 2010 United States Nuclear Posture Review (NPR) reflected this and ‘place[d] the prevention of nuclear terrorism and proliferation at the top of the U.S. policy agenda’.¹² In an effort to implement the Prague speech and prevent nuclear terrorism, the United States has undertaken ‘to secure all vulnerable nuclear materials worldwide’ and to enhance ‘national and international capabilities to disrupt illicit proliferation networks’ and ‘expand [...] nuclear forensics efforts’.¹³ One such step lies in the NSS process, which began a year after the Prague speech and aims to reduce the threat of nuclear terrorism.

Despite all these efforts and progress, ‘in twenty known cases over the past twenty years, officials have seized plutonium or highly enriched uranium outside of authorized control.’ None of these incidents provided enough material for a nuclear weapon. However, two problems remain.

First, in many instances, the seized material was advertised as a sample of a larger quantity for sale; material which, if it exists, authorities have never recovered. Second, the presence of fissile material outside of security measures is physical evidence of failure that might be recurring.

⁹ ‘The United Nations High-Level Panel on Threats, Challenges and Change’

¹⁰ ‘2010 Nuclear Posture Review Report’. April 2010. iii

¹¹ ‘Obama Prague Speech On Nuclear Weapons: FULL TEXT’, The Huffington Post, 06-05-2009

¹² ‘2010 Nuclear Posture Review Report’. April 2010. i

¹³ *Ibid.*, vii

Other incidents reinforce the fact that nuclear facilities and materials are not secure enough. These include ‘two attacks within minutes of each other on a site housing hundreds of kilograms of HEU’¹⁴ at Pelindaba, South Africa in 2007 and an 82-year-old nun’s intrusion into ‘the U.S. repository for weapons-grade uranium’, the Y-12 National Security Complex.¹⁵

The growing lethality of post-modern terror groups (1990s-2014)

Two major developments in its paradigm have also changed the face of terrorism as a whole.¹⁶ First, there has been a transition from ‘modern’ terrorism to what some scholars have labelled as ‘post-modern terrorism’. From the 1950s until the 1980s, terrorism was limited to non-state actors linked to particular territories, struggling to re-establish a given state or gain independence for it. ‘It was Algeria’s Front de libération nationale, seeking liberation from France, that defined modern terrorism, deliberately spilling the blood of random French civilians.’¹⁷ This trend began to change during the 1980s and became more dominant with the creation and strengthening of Al-Qaeda. Al-Qaeda was established and continues to perform as a ‘global network’, with no ties to a particular nation-state, although it has been based in Afghanistan and Pakistan and has received considerable support from individuals close to the Saudi establishment, including the royal family.¹⁸ As such, Al-Qaeda is the example of a post-modern terrorist organisation *par excellence*. Bobbitt uses a different term to qualify non-state actors such as Al-Qaeda and defines them in relation to the ‘market state’.

Market state terrorism will be just as global, networked, decentralized, and devolved and rely just as much on outsourcing and incentivizing as the market state. It does not depend upon state sponsorship; indeed, in some cases it would appear that al Qaeda had more influence over the government in whose jurisdiction it worked than did that government over it.¹⁹

Another factor distinguishing modern terrorist groups from post-modern entities is that ‘historically, terrorists have attempted to force the hand of political leaders by fuelling

¹⁴ Highly Enriched Uranium (HEU)

¹⁵ Tobey, William H. ‘We Are Failing at Nuclear Security’. Nuclear Security Matters, The Belfer Center for Science and International Affairs, Harvard University’s Kennedy School. 01-03-2014.

¹⁶ The terms ‘terror’ and ‘terrorism’, often used interchangeably, in fact refer to two different phenomena. Brian Jenkins defines ‘the former [as] the act of events and the latter being about imagination and fear.’

Masse, Todd (2011), 8

¹⁷ Bobbitt, Phillip (2009), 43

¹⁸ Evidence of Financial Links Between Saudi Royal Family and Al Qaeda’. *The New York Times*. 23-06-2009.

¹⁹ Bobbitt, Phillip (2009), 45

fear in a wider audience.’ Hence, where modern terrorist groups are limited in the means they employ and the number of casualties they inflict, post-modern terror organisations are not. Indeed, ‘trends dating from at least the 1990s indicate that political considerations may no longer be the major driving force behind today’s most dangerous terrorism threat, although instilling fear in a larger audience still motivates terrorists.’ This in turn is due to the second change in terrorism: ‘Today’s terrorism is often fuelled by extremist religious ideologies that rationalize destruction, vengeance, and punishment as both necessary ends in themselves and as tools to achieve a better world.’²⁰ As explained by Hoffman, the intersection between religion and terrorism is not new: ‘More than two thousand years ago the first acts of what we now describe as “terrorism” were perpetrated by religious fanatics.’²¹ Nevertheless, ‘as the number of religious terrorist groups was increasing’ in the 1990s, ‘the number of ethno-nationalist/separatist terrorist groups declined appreciably.’ It is not surprising, Hoffman notes, ‘that religion should become a far more popular motivation for terrorism in the post-cold war era as old ideologies lie discredited by the collapse of the Soviet Union and communist ideology,’ and that ‘the promise of munificent benefits from the liberal-democratic, capital state, apparently triumphant [...] fails to materialize in many countries throughout the world.’²² Second, terrorism has become increasingly connected to Islamism. This Islamisation is part of the ‘fourth wave’ of terrorism, which began in 1979.²³ This development is not possible in modern terrorism, as most modern terrorist groups have traditionally been linked to particular nation-states. The core of Al-Qaeda’s ideology lies on the fundamental reformation of all non-Islamic concepts and models, including the notion of the nationhood, which clashes with the idea of the *ummah*. The ‘Al-Qaeda Training Manual’ makes this very clear:

The young men returning to Allah realized that Islam is not just performing rituals but a complete system: Religion and government, worship and Jihad [holy war], ethics and dealing with people, and the Koran and sword. The bitter situation that the nation [*ummah*] has reached is a result of its divergence from Allah's course and his righteous law for all places and times. That [bitter situation] came about as a result of its children's love for the world, their loathing of death, and their abandonment of Jihad [holy war]. Unbelief is still the same. [...] It is the same unbelief that drove Sadat, Hosni Mubarak, Gadhafi, Hafez Assad, Saleh, Fahed--Allah's curse be upon the non-

²⁰ Ferguson, Charles. Potter, William (2004), 16

²¹ Hoffman, Bruce (2006), 83

²² *Ibid.* 85

²³ David Rapoport identifies four waves of terrorism: the ‘anarchist wave’, which began in the 1880s and lasted until the 1920s; the ‘anti-colonial wave’ of the 1920s-1960s; the ‘new left wave’ of following decades until the 1990s; and the ‘religious wave’, of which Islamism is a part of. Rapoport, David in Kegley, Charles (2003), 37

believing leaders--and all the apostate Arab rulers to torture, kill, imprison, and torment Moslems. These young men realized that an Islamic government would never be established except by the bomb and rifle. Islam does not coincide or make a truce with unbelief, but rather confronts it. The confrontation that Islam calls for with these godless and apostate regimes, does not know Socratic debates, Platonic ideals nor Aristotelian diplomacy. But it knows the dialogue of bullets, the ideals of assassination, bombing, and destruction, and the diplomacy of the cannon and machine-gun.²⁴

The 9/11 attacks ‘inevitably, redefined “terrorism” yet again.’ The attacks killed ‘a total of nearly three thousand people’. As noted by Bruce Hoffman, ‘to put that death toll in perspective, in the entirety of the twentieth century no more than fourteen terrorists incidents had killed more than one hundred people. And until 9/11 no terrorist operation had ever killed more than five hundred people.’²⁵ This meant that the 9/11 attacks ‘raised the lethality of terrorism to a new level. The terrorists clearly were determined to cause catastrophic casualties-tens of thousands of casualties-confirming a long-term trend toward increasingly large-scale, indiscriminate attacks.’ As argued by Brian Jenkins, while the worst attacks of the 1970s left tens of casualties, the 1980s and 1990s saw hundreds of deaths in terrorist attacks. The number rose to thousands in Al-Qaeda’s 9/11 attacks, thereby indicating the perpetrators’ willingness to use WMD to inflict greater casualties.²⁶ This is while Jenkins had noted in 1975 that ‘acts aimed at causing thousands or tens of thousands of casualties, for a variety of reasons, may be the least likely.’²⁷

These changes are crucial in the examination of Al-Qaeda’s nuclear ambitions. To be sure, religious ‘global networks’, with no attachment to a land or people, are the most likely to launch CBRN attacks. To borrow Bobbitt’s words: ‘terrorism will become a far more important security issue because market state terrorists, unlike their twentieth century predecessors, would actually use WMD against civilians.’²⁸ Zawahiri’s words confirm this idea. He argues that western political governments rely on the popular vote to shape their policies. Hence, the electorates of these countries are responsible for every questionable decision made by their government. Such decisions include the inception and support of the state of Israel: ‘These people have willingly called for,

²⁴ ‘The *Al Qaeda* Manual.’ UK/BM-6 – Translation.

²⁵ Hoffman, Bruce (2006), 18-19

²⁶ Jenkins, Brian (2002), ‘Countering al-Qaeda’. Arlington, VA: The RAND Corporation. P. 6

²⁷ Jenkins, Brian. ‘Will Terrorists Go Nuclear?’ Testimony before the Committee on Energy and Diminishing Materials of the California State Assembly, November 19, 1975. November 1975. Santa Monica: The Rand Corporation. P. 2

²⁸ Bobbitt, Phillip (2009), 9

supported, and backed the establishment of and survival of the State of Israel.²⁹ Therefore, while all the populations in the western world may not be actively taking part in the ‘war on Muslims’, they are guilty by virtue of their role in decision-making. As such, Al-Qaeda’s definition of who is a combatant and who can be legitimately targeted are very different from the traditional Islamic definitions discussed in Chapter Three. This worldview has led Al-Qaeda to conduct much more lethal attacks than modern terrorist groups, as it considers all western constituencies as legitimate targets. During the 1980-90s over a quarter of terrorism-related casualties resulted from attacks conducted by Shiite terrorist groups. Yet, these groups were not responsible for the CBRN attacks perpetrated during that period. According to Benjamin Cole, this provides evidence of the fact that the correlation between ‘the general trend of the increasing lethality of contemporary terrorism’ and the use of WMD is ‘equivocal at best’.³⁰ Yet, global terrorist networks, such as Al-Qaeda, also differ from their predecessors in another way. Whereas ‘modern’ terrorist groups, such as the Irish Republican Army (IRA), were reluctant even to launch deathly attacks with minimal casualties, and would in some instances even issue apologetic statements after perpetrating attacks, Al-Qaeda has not hesitated to inflict mass casualties and has stood by these acts. Hence, the network would be more willing to perpetrate nuclear and other WMD attacks.³¹

The willingness to inflict mass casualties stems from historical, cultural, and ideological factors.

Groups motivated by apocalyptic millenarian religious doctrines seem to be particularly dangerous, since such doctrines postulate (1) the imminent destruction of the existing world order, which is viewed as thorough and irremediably “evil”; (2) a terrible fate for the immoral, unenlightened majority; (3) a key role for a select group of very special people—the true followers of the doctrine, namely, themselves—who will be spared the fate of others; and (4) the collapse of the existing order followed by the creation of a worldly paradise in which the same special people will be freed from want, hardship, suffering, strife, oppression, immorality, and everything else that is “evil”.³²

These factors do not only determine whether a terrorist group would engage in CBRN terrorism, but also, how it would use WMD. For instance, a global network such as Al-Qaeda, and in particular Al-Qaeda core, would be more willing to use these weapons

²⁹ Al-Zawahiri, Ayman (2001), ‘Knights Under the Prophet’s Banner’. Part Ten

³⁰ Cole, Benjamin (2011), 15

³¹ Maurer, Stephen (2009), *WMD Terrorism – Science and Policy Choices*, Cambridge, MA: The MIT Press, 4

³² *Ibid.*, 21

strategically to inflict mass casualties. Smaller groups, however, would be more reluctant to inflict mass casualties and more likely to use these weapons tactically, mainly to impact society psychologically and economically.³³ Al-Qaeda meets all these requirements and it utilises the Islamic legal framework to shape its discourse promoting these ideas to concretise its goals. In addition to the aforementioned ideological changes, which have occurred in the past two decades, technical and technological progress also contributes to this new breed of terror. Al-Qaeda has mastered the art of proliferating its ideas through different media, communicating them to its audience across the Muslim world and beyond. The key to this achievement has been the advent of modern telecommunication technologies, including the Internet, facilitating communications between the various agents within the network and its affiliates. In fact, 'the Internet allows terrorists to recruit from a larger pool of potential sympathizers and to communicate instantaneously.'³⁴

In order for Al-Qaeda to continue its activities, it is crucial for its leadership to justify its every action and position in Islamic terms. 'Indeed, the network's very existence is dependent of the support of Muslims. This support allows the network to accomplish two tasks, which guarantee its efficiency and longevity. First, without support from Muslim communities, the group would be unable to recruit volunteers (*mujahidin*). Second, the organisation relies on the funding it receives to continue its operations. This funding is raised from two key sources: 'charitable contributions made by philanthropic and devout Muslims (who may not be aware of any diversion of their gift), and the operation of legitimate businesses (such as bin Laden's network of companies).'³⁵ The network's attempts to appeal to Muslims in order to legitimise and fund its operations as well as their effectiveness are further assessed in the following sections.

Whether or not Al-Qaeda does, in fact, need CBRN weapons to promote its goals remains controversial. For instance, some argue that if the goal pursued by the organisation is to inflict mass casualties, it does not need WMD. Al-Qaeda's strategy is one of 'terrorism-as-provocation', which entails that 'most of the killing (and dying) will be done by others'. Yet, even in that scenario, the use of such weapons against the west would probably be perceived as a victory for the network.³⁶ What is more, with the

³³ Ackerman and Tamsett (2009), xv

³⁴ Stern, Jessica (1999), 10

³⁵ Bobbitt, Phillip (2009), 50

³⁶ Maurer, Stephen (2009), 5

advent and fast progress of a former affiliate, the Islamic State in Iraq and Syria (ISIS), the network's significance has been questioned. Acquiring and, perhaps, using WMD, especially nuclear weapons, could serve as a vehicle for the network to assert continued relevance.

All the developments identified in the previous section are of tremendous importance in understanding why the case of Al-Qaeda is assessed in the context of this study, while HAMAS and Hezbollah are overlooked. Indeed, while some have argued that a nuclear-armed Iran could provide such groups with nuclear weapons, there are several reasons why neither Tehran nor HAMAS and Hezbollah would choose to go down that path. First, neither of these groups has expressed any interest in nuclear weapons. Second, despite some arguments according to which Iran could provide these groups with nuclear weapons,³⁷ this seems very unlikely. Regardless of the ties between the Islamic Republic and HAMAS and Hezbollah, Tehran does not have any incentive in providing these groups with fissile materials or nuclear technology, as it would likely backfire. If such weapons are traced back to Iran, and they would be,³⁸ the regime and the nation would pay a very high price.³⁹ The government has no incentive in providing the

³⁷ Kroenig, Matthew. 'Time to Attack Iran – Why a Strike Is the Least Bad Option'. *Foreign Affairs*. January-February 2012 issue.

Lieber, Keir. Press, Daryl (summer 2013). 'Why States Won't Give Nuclear Weapons To Terrorists'. *International Security*, Volume 38, issue 1, PP. 80-104. P. 81

'To constrain its geopolitical rivals, Iran could choose to spur proliferation by transferring nuclear technology to its allies -- other countries and terrorist groups alike.'

³⁸ Nuclear forensics has made considerable progress in the past few decades. Many experts argue that it would be almost impossible for states to transfer nuclear weapons to a terrorist group without being discovered. Keir Lieber and Daryl Press identify several main reasons why this is the case. First, they suggest that there is a 'strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution.' Second, this is especially the case if such attacks are perpetrated against the U.S. homeland or a U.S. ally. Third, they argue that attribution of nuclear terror incidents would be easier than typically suggested in the literature. They conclude that: 'the dangers of a state giving nuclear weapons to terrorists have been overstated, and thus arguments for taking costly steps to prevent proliferation on those grounds—as used to justify the invasion of Iraq and fuel the debate over attacking Iran—rest on a shaky foundation.'

Lieber, Keir. Press, Daryl (summer 2013), 83

³⁹ Daniel Byman offers compelling arguments why the arguments fashioned round the idea of Iran proliferating nuclear weapons to terrorist organisations are exaggerated. He argues that 'despite Iran's very real support for terrorism for more than the last 25 years and its possession of chemical weapons for over 15 years, Tehran has not transferred unconventional systems to terrorists. Iran is likely to continue this restraint and not transfer chemical, biological, or nuclear weapons for several reasons. First, providing terrorists with such unconventional weapons offers Iran few tactical advantages as these groups are able to operate effectively with existing methods and weapons. Second, Iran has become more cautious in its backing of terrorists in recent years. And third, it is highly aware that any major escalation in its support for terrorism would incur U.S. wrath and international condemnation.'

Byman, Daniel (June 2007). 'Iran, Terrorism, and Weapons of Mass Destruction'. *Studies in Conflict & Terrorism*, 31:169-181, 2008. P. 169

‘ultimate’ weapon to non-state actors, which are unpredictable and out of its control.⁴⁰ Given the unpredictability of terrorist groups and their revolving outside the international legal framework, which, as discussed in Chapter Two, aims to render states predictable, trust between state and non-state actors is difficult. Hence, a state can never have a guarantee that its fissile material or weapons would not be used against it or its nationals in the event a non-state actor would no longer need its assistance, their interests would clash, or it would want to exercise pressure to receive more support.

Trust and plausible deniability are inversely related when it comes to state backing of terrorists. Iran trusts Hezbollah and works openly with it, but this close relationship is far from secret. Iran also has ties to a range of Palestinian and Iraqi groups, but while these relationships are more covert, and thus more deniable, they are not built on trust. Thus, Iran lacks deniability for the groups to which it might transfer more advanced systems, but lacks the trust that would make it more likely to transfer advanced systems.⁴¹

In fact, these groups’ support to the Islamic Republic has been inconstant to say the least. For example, Hezbollah announced it would not retaliate should Israel attack Iran’s nuclear facilities, despite Tehran being one of its chief sponsors. Furthermore, relations between these groups and Iran have been rocky throughout the Islamic Republic’s lifetime, resulting in Iran cutting its funding to them.⁴² Third, nuclear weapons programmes entail high costs and require many resources, thus becoming a state’s ‘crown jewels’.⁴³ The Iranian nuclear programme, especially, has been a challenging endeavour with many costs, political and financial. Hence, Iran would have very little incentive simply to provide these groups with nuclear technology. Indeed, as discussed in Chapter Six, a key plank of the Iranian nuclear narrative has lain in the element of pride and sharing this element with rogue organisations would undermine these efforts. Likewise, Tehran’s argument according to which the use of WMD is strictly *harām* would also be undermined if it provides non-state actors with the technology for indiscriminate use. Fourth, the transfer of such technology would represent a great risk and would not be worthwhile for the state, as if used by organisations, which are beyond the control of Tehran and which often have clashing interests, would be traced back and cause retaliation. As suggested by Todd Masse, while the effectiveness of nuclear forensics leaves a lot to be desired, its combination

⁴⁰ Masse, Todd (2011), 29-30

⁴¹ *Ibid.*

⁴² Katz, Yaajov. ‘Iran Said To Have Cut Hizbullah Aid By 40%’. *The Jerusalem Post*. 16-12-2010.

Tait, Robert. ‘Iran Cuts Hamas Funding Over Syria’. *The Telegraph*. 31-5-2013.

⁴³ Masse, Todd (2011), 29-30

with other tools can allow for the fissile material or nuclear weapons used by a terrorist group to be traced back to the state of origin.⁴⁴

Nevertheless, even if these groups did manage to acquire such weapons, they would have no incentive to use them. Both groups have ties to particular territories and populations, which are vulnerable and would suffer substantial retaliation should these groups choose to inflict mass casualties indiscriminately, using WMD and more particularly nuclear weapons.⁴⁵ As Stephen Maurer points out, unless these groups decide to wage ‘global jihad’, they can be deterred like ‘rogue’ states. However, the likelihood of these states traveling the same path as Al-Qaeda and launching global jihad also seems low, precisely due to the connection between these groups and the territories and populations they claim to fight for and their vulnerability.⁴⁶

Furthermore, these groups aim to have a say in national and international matters and decision-making. Hence, they cannot use CBRN weapons as freely as terrorist organisations, such as Al-Qaeda, that reject the *status quo* altogether and have no political aspiration. Accordingly, if HAMAS or Hezbollah launched an indiscriminate attack, resulting in the deaths of a significant number of people, they would lose all credibility and legitimacy among their constituencies. Modern terrorist groups would not be able to function as part of the establishment and would be alienated from the political process. What is more, as is noted in the following sections, Hezbollah denounced Al-Qaeda’s methods after 9/11. Hence, the common wisdom of the pre-9/11 era still holds true in the case of modern terrorist groups, such as HAMAS and Hezbollah. They ‘want a lot of people watching, not a lot of people dead’. In fact, they aim to harass, not to kill in large numbers’.⁴⁷ As noted previously, this trend has changed with the advent of post-modern terrorism. Al-Qaeda has been pursuing CBRN capabilities because their aim is to inflict maximum damage and kill many people. To borrow Jessica Stern’s words, their intent is ‘commit macroterrorism’.⁴⁸ 9/11 was the best illustration of this change, as it was a combination of these two goals: killing many

⁴⁴ *Ibid.*

⁴⁵ Maurer, Stephen (2009), 22

⁴⁶ *Ibid.*

⁴⁷ Jenkins, Brian. ‘Terrorism and the Nuclear Safeguards Issue’ (Testimony before the House Interior and Insular Affairs Subcommittee on Energy and the Environment, U.S. House of Representatives, Washington, D.C., February 26, 1976. March 1976. Santa Monica: The Rand Corporation. P. 4

⁴⁸ Stern, Jessica (1999), 76

people while a lot of people were watching, thus creating one of the most memorable events in modern history.

Another factor that makes Al-Qaeda so relevant lies in the network's 'robustness, in the face of sustained international counterterrorist efforts. This is reflected in the ability of the al-Qa'ida central command to regroup and ensconce itself in ungoverned spaces in Pakistan's northwest provinces after their Taliban hosts were routed in Afghanistan.'⁴⁹ Al-Qaeda's evolution in response to counterterrorism measures is assessed in the next section. In light of the network's flexibility and ability to adapt and survive despite effective counterterrorism operations, the best way to deter the group perhaps lies in the deligitimisation of its cause and the means it employs. As noted by Mowatt-Larssen, as long as Al-Qaeda's message resonates 'on the Arab streets', the network will be successful.⁵⁰

Lastly, Al-Qaeda is one of three terrorist entities to have ever sought nuclear weapons. The two others are Aum Shinrikyo, the Japanese group responsible for the 1995 Sarin attack in the Tokyo subway, and, possibly, a terrorist group based in the North Caucasus.⁵¹

Motivations and goals

Al-Qaeda's goals and motivation have been misunderstood by security experts, leading to a number of foreign policy miscalculations and mistakes since the network's establishment. This lack of understanding in turn is due to misrepresentations and distortions. In fact, the view that Al-Qaeda's actions have been widely described as entailing a disdain for 'our way of life' is an oversimplification of the network's motivation. Mohammad-Mahmoud Ould Mohamedou argues that, 'the answer is a deep and heavy sense of injustice harboured by a transnational armed group self-championing the feelings of millions around the Arab and Islamic world.'⁵² What is more, until 9/11, many experts did not believe that the very nature of terrorism was changing.

⁴⁹ Ackerman and Tamsett (2009), xii

⁵⁰ INT004SNT

⁵¹ Matthew Bunn, Martin Malin, Nickolas Roth, William Tobey, "Advancing Nuclear Security: Evaluating Progress and Setting New Goals," Cambridge, MA: The Belfer Center for Science and International Affairs, March 2014, P. i

⁵² Mohamedou, Mohammad-Mahmoud (2011), *Understanding Al Qaeda – Changing War and Global Politics*. New York: Pluto Press. P. 11

Brian Jenkins wrote in 1976 that, ‘for reasons ranging from a sincere concern for public safety to personal aggrandisement, some have inadvertently or deliberately exaggerated the terrorist threat.’ This in turn, he argued, ‘may have the effect of making any sort of “nuclear action” more attractive to existing or would-be terrorists.’⁵³ Jenkins noted that terrorists would not perpetrate a nuclear attack aiming to inflict mass casualties, but rather because such an attack would receive considerable attention.⁵⁴ He described terrorism as ‘theatre’, arguing that contrary to popular belief, terrorists are not irrational killers, but rather perpetrators of violence attempting to ‘inspire fear, to create an atmosphere of alarm’.⁵⁵ This would allow them to draw ‘attention to themselves and causes [...] thereby gaining some political leverage’.⁵⁶ Jenkins also points out that, ‘terrorist actions have tended to be aimed at producing immediate dramatic effects, a handful of violent deaths – not lingering illnesses, and certainly not a population of terminally ill, vengeance-seeking victims.’⁵⁷

Even in the years leading to 9/11, experts rejected the possibility of an attack with those dimensions. As noted by Mowatt-Larssen, ‘had we taken the *fatwās* seriously, we could have prevented 9/11 – they [Al-Qaeda] were telling us everything, we just ignored it.’ This, Mowatt-Larssen argues, is because of the west’s tendency to project its ideas of rationality: ‘we think that it would be stupid for Al-Qaeda to conduct a nuclear attack and that it would be counterproductive. But we should be confident that Zawahiri is not thinking the same way.’⁵⁸

Since, the threat of nuclear terrorism has become more realistic, given the aforementioned growing lethality of terrorist groups and the attempts made by non-state actors to procure CBRN capabilities. Hence, Jenkins’ descriptions of modern terrorism are not applicable to Al-Qaeda. Yet, similar arguments have been presented about Al-Qaeda. Mohamedou, for instance, rejects the ideas that the network is irrational, fundamentalist, and has a baseless hatred of the west.⁵⁹ The network has justified its attempts to procure a nuclear capability by presenting two main rationales underlying it.

⁵³ Jenkins, Brian. ‘Terrorism and the Nuclear Safeguards Issue’ (Testimony before the House Interior and Insular Affairs Subcommittee on Energy and the Environment, U.S. House of Representatives, Washington, D.C., February 26, 1976. March 1976. Santa Monica: The Rand Corporation. P. 2

⁵⁴ *Ibid.*, 3

⁵⁵ *Ibid.*, 4

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ INT004SNT

⁵⁹ Mohamedou, Mohammad-Mahmoud (2011), 92-96

These two rationales are possession as a means of deterrence and, arguably, the use of these weapons to retaliate or inflict maximum damage.⁶⁰ The network has emphasised the importance of the possession of CBRN weapons to deter the enemies of Islam. As discussed in chapter Three, bin Laden believed the possession of nuclear weapons to be obligatory (*wajīb*) for Muslims. William Browne argues that this should not lead one to extrapolate that the network intends to use these weapons. He further suggests that bin Laden did not state in ‘an unqualified manner’ that he would use these weapons against the west, merely making the case for their possession for deterrence purposes.⁶¹ Nevertheless, bin Laden articulated at least two conditions which would lead the group to use CBRN weapons. First, Al-Qaeda core has declared that it would retaliate by using WMD against any chemical or nuclear attack launched by the United States.⁶² Second, the network’s aim is to ‘inflict maximum amount of physical damage on the United States’.⁶³ Yet, even semi-successful operations are a major political achievement if there is comprehensive media coverage of the event.⁶⁴ Hence, if the network successfully acquires CBRN weapons but fails to achieve the impact it aims for in effect, it would still ‘win’ if it receives the media attention it seeks.

Nevertheless, it is important to distinguish between Al-Qaeda core and the various affiliates, as they tend to pursue different objectives. For instance, some of the affiliates’ leaders ‘want to establish Islamic emirates in specific countries or regions, while others want to replace current regimes and replace them with an Islamic one. To achieve these ends, some view broader violent jihad as a means, while others are ‘agnostic’ about it. Zawahiri’s main objective lies in the overthrow of regimes in ‘key Muslim countries’, in specific regions, rather than establishing a Muslim caliphate globally.⁶⁵ Zawahiri pursues his aim of reviving a pan-Islamic caliphate through violent jihad, relying on ‘guerrilla campaigns as [its] main vehicle’.⁶⁶

⁶⁰ Daly, Sara. Parachini, John. Rosenau, William (2005). ‘Aum Shinrikyo, Al Qaeda, and the Kinshasa Reactor – Implications of Three Case Studies for Combating Nuclear Terrorism’. Arlington, VA: Rand Corporation. P. 25

⁶¹ Browne in Russel and Wirtz (2008), 95

⁶² Daly, Sara. *et al.* (2005), 27

⁶³ *Ibid.*, 25

⁶⁴ Denécé, Éric (2004), *Al-Qaeda – Les nouveaux réseaux de la terreur*. Paris : Ellipses. P. 52

⁶⁵ ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013. Serial No. 113-44. Washington, D.C. P. 9-10

⁶⁶ *Ibid.* 4

The concept of nuclear terrorism

Charles Ferguson and William Potter identify four ways in which terrorists ‘can exploit military and civilian nuclear assets around the globe to serve their destructive ends’. These four means can be divided into two categories: those less likely but with a much greater impact and those easier to achieve and more likely, but with less impact. The first category encompasses ‘the theft and detonation of an intact nuclear weapon’ and ‘the theft or purchase of fissile material leading to the fabrication and detonation of a crude nuclear weapon-an improvised nuclear device (IND)’. Such an attack is more difficult to achieve, therefore less likely to occur, but would have catastrophic consequences. It would lead to hundreds of casualties, the loss of billions of dollars in infrastructure, and radioactive contamination, leading to considerable health and economic impact. The second class includes ‘attacks against and sabotage of nuclear facilities, in particular nuclear power plants, causing the release of large amounts of radioactivity’ and ‘the unauthorized acquisition of radioactive materials contributing to the fabrication and detonation of a radiological dispersion device (RDD)-a “dirty bomb”-or radiation emission device (RED).’ It would be easier and therefore more likely, but with a lesser impact than the two aforementioned types. It would amount to billions of dollars of damage, radioactive contamination, and long-term health effects.⁶⁷ Likewise, nuclear terrorism itself remains a lower probability threat than conventional terrorism, but would entail graver consequences.⁶⁸ Either of these are potential avenues for Al-Qaeda. However, the network seems to have been more interested in the first category, more difficult but with a greater impact, thus far. Indeed, as noted throughout the chapter, Al-Qaeda does not inflict mass casualty for the sake of killing a great number of people. It does so to achieve certain goals, which help promote its agenda. Therefore, if the network decides to launch a nuclear attack, it would be likely to do so not only to inflict maximum damage but also to showcase its capability to the west and receive support from radicalised Muslims. The most effective means of gaining such prestige and deterring the west would be to acquire and/or use nuclear weapon rather than use RDD or RED. Nevertheless, ‘the available open-source data clearly indicate an increased interest by terrorists in CBRN weapons and agents.’⁶⁹

⁶⁷ Ferguson, Charles. Potter, William (2004), 3-5

⁶⁸ *Ibid.*, 5

⁶⁹ *Ibid.*, 17

Nuclear security measures in place

As discussed previously, nuclear terrorism is increasingly viewed as a serious threat to international peace and security. This has been confirmed by a series of events. ‘In Pakistan [...] new investigations have revealed unauthorized sales of sensitive nuclear technology by Pakistani nuclear scientists supportive of a fundamentalist Islamic agenda.’⁷⁰ Therefore, a number of steps have been taken to minimise the risk of nuclear terrorism. These include international instruments and organisations established to detect, deter, and prevent nuclear terrorism. The Convention on the Physical Protection of Nuclear Material (CPPNM), the aforementioned NSS, GTR, as well as instruments discussed in Chapter Two, such as CTBT, UNSCR 1540 and the International Convention for the Suppression of Acts of Nuclear Terrorism are among these instruments.

As noted in Chapter Two, the CTBT aims to ban all civilian and military nuclear explosions. The treaty has yet to enter into force, which could arguably help prevent nuclear terrorism.

Some argue that the absence of nuclear testing and the diminishing numbers of nuclear weapons decrease the likelihood of terrorists obtaining nuclear weapons or materials. The prohibition of testing will make it more difficult for proliferators to develop warheads that might be mounted on missiles. Because terrorism challenges the civilized norms contained in international law, a number of experts state that resolved commitment by the international community to such norms (including the CTBT) will contain radical terrorism.⁷¹

The International Convention for the Suppression of Acts of Nuclear Terrorism was adopted in 2005 and entered into force in 2007. It provides that all States Parties must ‘make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency’ (Art. 8).⁷²

The CPPNM, was adopted in 1979 and entered into force in 1987. Article 3 of the convention provides that:

⁷⁰ *Ibid.*, 1

⁷¹ ‘A New Look at the Comprehensive Nuclear-Test Ban Treaty (CTBT)’. The International Group on Global Security (IGGS). September 2008. The Hague: Netherlands Institute of International Relations Clingendael. PP. 3

⁷² ‘International Convention for the Suppression of Acts of Nuclear Terrorism’ (2005).

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.⁷³

It was amended and renamed the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities in 2005. The amendment expanded the scope of the convention to cover the protection of nuclear facilities.

The Amendment to the CPPNM makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage and transport. It also provides for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences.⁷⁴

Al-Qaeda and nuclear terrorism

Following 9/11, scholars and practitioners began to examine Al-Qaeda's nuclear ambitions and the steps taken by the network during the 1990s to develop a nuclear capability. The U.S. intelligence community concluded that Al-Qaeda has 'a strong interest in, and has attempted to acquire nuclear weapons.'⁷⁵ In fact, during Operation Enduring Freedom⁷⁶, the international coalition forces found documents confirming the organisation's nuclear ambitions. However, the weapon designs contained in the 'Superbomb' document were deemed unusable and other pieces of information retrieved in other documents contained mistakes.⁷⁷ Hence, despite the organisation's efforts to develop nuclear and radiological capabilities, it has so far failed to present a serious threat.⁷⁸

In 1998, while attempting to develop CBRN capabilities and training his men to launch an attack using chemical, biological, and radiological weapons, bin Laden declared it his religious duty to acquire WMD for deterrence purposes.⁷⁹ Zawahiri even claimed

⁷³ 'The Convention on the Physical Protection of Nuclear Material' (1979). *INFCIRC/274/Rev.1 – May 1980*

⁷⁴ 'Convention on the Physical Protection of Nuclear Material and Amendment thereto'. IAEA.

⁷⁵ Daly, Sara. *et al.* (2005), 24

⁷⁶ The War in Afghanistan launched by the United States and the coalition forces in response to 9/11, aiming to dismantle the Taliban.

⁷⁷ *Ibid.*, 37-38

⁷⁸ *Ibid.*, 39

⁷⁹ Mowatt-Larssen, Rolf (2010), 18

that the network had procured these weapons: ‘we sent our people to Moscow, to Tashkent, to other central Asian states and they negotiated, and we purchased some suitcase bombs’.⁸⁰ While the intelligence community did not confirm the organisation’s success in obtaining such weapons, it is clear that it sought CBRN capabilities. Notably, bin Laden led the group’s efforts to procure enriched uranium in Sudan 1992-1996.⁸¹ He employed a ‘point man’ responsible for nuclear matters, Mamdouh Mahmud Salim. Salim attempted to procure Russian enriched uranium in 1993, but was only able to purchase low-grade reactor fuel.⁸² Likewise, Jamal al-Fadl, who left the network and became an informant for the U.S. government, was instructed to facilitate the purchase of South African-origin uranium.⁸³ However, the group’s efforts to procure enriched uranium failed as its unknowledgeable members were ‘subject of numerous other scams involving radioactive material’.⁸⁴

During his stay in Sudan, bin Laden invested in the local economy, established dual-use companies, and funded the country’s National Islamic Front (NIF).⁸⁵ Despite suffering considerable financial loss, the network gained access to ‘laboratory assistance’ and ‘a sanctuary that allowed [it] to pursue [its] interest in CBRN weapons.’⁸⁶ Al-Qaeda further approached the Islamic Movement of Uzbekistan and a number of Pakistanis for assistance to develop a nuclear capability. Among these Pakistanis were the ‘long beards’, experts having worked on Pakistan’s nuclear programme and who did not view their government keenly.⁸⁷ Later, 1999-2001, Al-Qaeda conducted ‘crude but sensible conventional explosive tests for the nuclear program in desert of Afghanistan.’⁸⁸ These were conducted under the supervision of Abdel Aziz al-Masri (also known as Ali Sayyid al-Bakri), ‘the father of al Qaeda’s nuclear program.’⁸⁹

⁸⁰ Daly, Sara. *Et al.*, 26

⁸¹ *Ibid.*, 29

⁸² Stefan Leader (1999), ‘Osama Bin Laden and the Terrorist Search for WMD’. *Jane’s Intelligence Review*, Vol. 11, No. 6, June 1999.

⁸³ Daly, Sara. *et al.*, 32

⁸⁴ *Ibid.*, 33

⁸⁵ *Ibid.*, 30

The NIF, founded by Hassan al-Turabi and led by Sudanese President Omar al-Bashir (pursued by the International Criminal Court for ‘masterminding and implementing’ the genocide and crimes against humanity in Darfur), is an Islamist political organisation, which exercises control over the Sudanese government.

International Criminal Court (14-07-2008), ‘ICC Prosecutor presents case against Sudanese President Hassan Ahmad Al BASHIR, for genocide, crimes against humanity and war crimes in Darfur’.

⁸⁶ Daly, Sara, *et al.* (2005), 30

⁸⁷ *Ibid.*, 35

⁸⁸ Matthew Bunn, *et al.* (2014), P. i

⁸⁹ Mowatt-Larssen, Rolf (2010), 15

These efforts were undertaken covertly through ‘a small group of operatives, the vast majority of which did not possess the capabilities of dealing with CBRN, except for crude homemade bombs.’ After the coalition’s intervention in Afghanistan, the fall of the Taliban, and subsequently, its loss of its Afghan safe haven, Al-Qaeda core lost its ability to pursue these weapons. However, some have argued that one area remains where such weapons can be developed—namely, among Muslim communities in the west, especially in Europe.⁹⁰

While pursuing a nuclear capability, bin Laden claimed that ‘to seek to possess the weapons that could counter those of the infidels is a religious duty.’⁹¹ As mentioned in chapter Three, Al-Qaeda core, led by bin Laden and Zawahiri, issued a *fatwā* declaring the pursuit of WMD a religious duty for Muslims.

Al-Qaeda core and affiliates

As discussed previously, the nature of terrorism has changed drastically since the end of the Cold War. One of the factors contributing to this change lies in the fact that modern terrorist groups were ‘comparatively well-defined, contained, and stable’. Post-modern terrorist organisations, by contrast, are ‘broadly spread out’ and ‘amorphous’, which ‘while held together by a common ideology, may lack any strong or direct linkage among members.’⁹² Al-Qaeda is the first (and currently only) such ‘non-governmental terrorist organisation’.⁹³ This has created a challenge for counter-terrorism experts in defining the network. It provides evidence for ‘the need for a clear and systematic way of articulating the important differences between [the] different labels’ used to describe the organisation.⁹⁴ Al-Qaeda is further a ‘global organization’, with ‘significant heterogeneity’. There is ‘no consistency in what analysts are referring to when the term Al Qaeda is used.’⁹⁵ It is ‘in reality a conglomerate of a number of terror groups and

⁹⁰ Paz, Reuven (2005), 84

⁹¹ Ackerman and Tamsett (2009), 194-95

⁹² Jackson, Brian (2006), ‘Groups, Networks, or Movements: A Command-and-control-Driven Approach to Classifying Terrorist Organizations and Its Application to Al Qaeda’, *Studies in Conflict & Terrorism*. 29:241-262. London: Routledge. P. 242

⁹³ Denécé, Éric (2004), 47

⁹⁴ Jackson, Brian (2006), 242

⁹⁵ *Ibid.*, 250

their cells, of varying autonomy but who share a common ideology and who cooperate with each other.⁹⁶

Today, Al-Qaeda ‘can be divided into four tiers: central al Qa’ida, affiliated groups, allied groups, and inspired networks.’⁹⁷ First, central Al-Qaeda or Al-Qaeda core is based in Pakistan and, as of October 2014, led by Ayman al-Zawahiri. However, ‘there is no standardized definition of al Qaeda’s “core.”’⁹⁸ The core serves as a hub for ‘technical support.’⁹⁹ The core arguably the most likely to seek and use CBRN weapons. Second, the affiliates are the ‘formal branches’ of the network, whose leaders pledge ‘bayat (loyalty) to the core leadership. The affiliates were established in the early 1990s,¹⁰⁰ while bin Laden was in Sudan and attempting to procure HEU. These groups include Al-Qaeda in the Arabian Peninsula (AQAP), Somalia’s Al-Shabāb, and Jabhat al-Nusrah. Third, the allied groups are those with a direct relationship to Al-Qaeda but that ‘have not become formal members’, thus preserving their independence yet working with Al-Qaeda on specific operations. Lastly, the inspired networks are those without direct contact to the core, but ‘who are inspired by’ the network’s cause and share its motivation by ‘hatred of the West and its allied regimes in the Middle East.’ The Boston Marathon bombers could fall under this category.¹⁰¹

Brian Jackson identifies three levels of authority, which can be exerted within terrorist organisations. These are strategic, operational, and tactical control or influence. The ability to control the organisation on all three levels strengthens leaders. First, strategic influence is the definition of ‘the top-level goals and aims of the group’. The statements and *fatāwā* issued and commissioned by bin Laden fall under this category as they ‘defin[e] the strategic aims of the global jihad.’ Second, operation control is defined as the pursuit of strategic goals, via the approval and selection of operations and targets. Lastly, tactical control is the ability to influence the day-to-day activities of particular individuals within the group.¹⁰² With ‘larger, more complex terrorist organizations,

⁹⁶ *Ibid.*, 251

⁹⁷ ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013. P. 12

⁹⁸ *Ibid.*, 38

⁹⁹ Denécé, Éric (2004), 48

¹⁰⁰ ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013. P. 40

¹⁰¹ *Ibid.*, 13

¹⁰² Jackson, Brian (2006), 244

these classes of command and control authority can be usefully applied as three separate variables for modelling and categorizing them.’¹⁰³ Based on the command and control structure, three types of terrorist organisations can be identified: tightly coupled groups, coupled networks, and loosely coupled movements. Categorising Al-Qaeda reveals itself problematic, however.

First, there is the original network, the one that committed 9/11, which uses its own resources and people it has recruited and trained. Then, there is the ad-hoc terrorist network, consisting of franchise organizations that Al Qaeda created...The third network [is] a strategic union of like-minded companies...Finally, there is the fourth network, “imitators, emulators.”¹⁰⁴

Nevertheless, Al-Qaeda has ‘significant characteristics consistent with a *loosely coupled movement*: Actions taken by “imitators” or “emulators” are only strategically (and perhaps operationally) inspired, not tactically controlled.’¹⁰⁵

While terrorism as a whole has changed in the past few decades, Al-Qaeda itself has also changed since 9/11. This shows the group’s flexibility and ‘dynamic nature’. This stems from the counterterrorism efforts mainly led by the United States but also the organisation’s own ‘efforts to change and adapt.’¹⁰⁶ In fact, Al-Qaeda ‘has become more an idea or a concept than an organization; an amorphous movement tenuously held together by a loosely networked transnational constituency’.¹⁰⁷

Since bin Laden’s death, the conventional wisdom has been that the network ‘is on its last legs’ and that its ‘remnants [...] remain too weak for us to be concerned about.’¹⁰⁸ Al-Qaeda core (in Pakistan) has suffered the most and four out of five of its top leaders having been killed.¹⁰⁹ ‘As a result, its regional affiliates in Iraq, North Africa, and especially Yemen, the base of [AQAP], currently pose the greatest threat.’¹¹⁰ The 2014 ‘Worldwide Threat Assessment of the US Intelligence Community’ identified AQAP as posing ‘a significant threat’ to the United States and ‘remain[ing] intent on targeting the

¹⁰³ *Ibid.*, 245

¹⁰⁴ *Ibid.*, 250

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, 243

¹⁰⁷ *Ibid.*, 251

¹⁰⁸ ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013. P. 1

¹⁰⁹ *Ibid.*, 2

¹¹⁰ Jenkins, Brian (2012), ‘Al Qaeda in Its Third Decade – Irreversible Decline or Imminent Victory?’ Arlington, VA: the RAND Corporation. P. 3

United States and US interests overseas.’¹¹¹ Yet, the threat remains significant, though its source has changed. Indeed, the network has become more decentralised and ‘its chief terrorist activity is now being conducted by its local and regional affiliates.’¹¹² In fact, ‘there has been a net expansion in the number and the geographic scope of al-Qaeda affiliates and allies over the past decade’.¹¹³ This, Seth Jones argues, is due to two factors. First, the Arab Spring, in particular the events in Egypt, have played a crucial role in weakening various regimes across the MENA, allowing Al-Qaeda affiliates to establish themselves throughout the region. As Islamic regimes have replaced secular autocracies, the path has been increasingly paved for Al-Qaeda to set foot in the region. This is tied to the growing sectarianisation of the region, with the Sunni side being funded by state and non-state actors alike, providing more resources to Al-Qaeda and its affiliates. Mowatt-Larssen also highlights the role of the Arab Spring in Al-Qaeda’s resurgence:

Al-Qaeda core is not deteriorating but, in fact, resurging. The Arab Spring helped it. Before, Al-Qaeda was the alternative ideology to mainstream Arab politics, then it collapsed with the Arab Spring. Now, it is back because of the disillusion resulting from the Arab Spring. The drone policy has not been as effective as one would think.¹¹⁴

Second, as noted previously, the network has become increasingly decentralised, with various affiliates running their operations autonomously, while still communicating with the core. Hence, according to Jones, even if Zawahiri were successfully removed, he could be replaced by at least four individuals, thus ensuring the movement’s continuity.¹¹⁵

In Thomas Hegghammer argues that, ‘the main threat in the [following] 2-3 years is ad-hoc attacks by unaffiliated agents, which are harder to prevent, but less lethal on average.’ Deterrence seems to be working to some extent and these groups seem to be pursuing ‘local agendas’.¹¹⁶ As such, the possibility of the use of CBRN weapons is less likely. The use of such weapons against the United States, the European Union, and

¹¹¹ Clapper, James R., ‘Statement for the Record – Worldwide Threat Assessment of the US Intelligence Community – Senate Select Committee on Intelligence’. 29-01-2014. P. 4

¹¹² ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013. P. 1

¹¹³ *Ibid.*, 3

¹¹⁴ INT004SNT

¹¹⁵ ‘Global Al-Qaeda: Affiliates, Objectives, and Future Challenges – Hearing before the Subcommittee on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs – House of Representatives’, 18-07-2013.4

¹¹⁶ *Ibid.*, 47

their allies would be met with potentially vital retaliation by the west. Additionally, their use for tactical purposes and local operations seems to be not only not useful but also counterproductive, as it would antagonise local populations against these groups.

Another argument lies in the affiliates' ability to acquire nuclear weapons. Al-Qaeda core, which had more resources during the 1990s, failed to acquire or procure nuclear weapons and materials. Hence, smaller, less resourceful affiliates are less likely to be able to succeed where the core failed. In fact, these groups 'are not operationally capable of circumventing the many countermeasures and detection systems that Western governments have put in place since 9/11.' What is more, as noted in the beginning of the chapter, a number of nuclear security programmes have successfully secured nuclear weapons and materials since Al-Qaeda's last attempts. However, Hegghammer also states that he expects 'a "second wave" of serious plots in the West some 4-6 years down the line.'¹¹⁷ But such an attack, he argues, would be likely perpetrated by an organisation still unknown. Indeed, known groups' activities are monitored and they would be unable to inflict the same level of damage as unknown groups. Such an organisation could succeed where Al-Qaeda has failed, as the bomb would provide it with more prestige and ability to attract both recruits and funding. This would fit into Al-Qaeda's narrative, shaped by the network's interpretation of Islam. One such candidate could be ISIS.

The Islamic Discourse

Justifying jihad

Al-Qaeda's inception holds its roots in two separate and even conflicting agendas led by the United States and Islamists in the context of the Cold War. While these two had fundamentally different ideologies, they shared a common interest: combating communism. This led the two opposing ideologies to join forces to combat a common enemy. In 1979, Afghanistan became the battleground of a war opposing the USSR, on the one hand, and the United States and what gave birth to Al-Qaeda, the *mujahidin*, on the other.¹¹⁸ Recruiting the *mujahidin* to combat the Soviet invasion were Osama bin

¹¹⁷ *Ibid.*

¹¹⁸ 'With the Soviet defeat in 1989, the CIA closed down its arms pipeline to the Afghan mujahideen. Left behind were tens of thousands of well-trained and well-armed Arab, Asian, and Afghan fighters available for new jihad.'

Laden and Abdullah Azzam. In 1984, they created the *Maktab al-Khidamāt* (MAK), which raised funds, recruited *mujahidin*, and helped train recruits. The United States' agenda was to create a 'green belt' of Muslim states, which would help prevent the spread of communism in the region. The *mujahidin*, on the other hand, were working to stop communism to preserve Islam. Hence, what was a means to one was an end to the other. Given its single-minded efforts to contain the much-feared 'domino' of states joining the communist bloc, Washington failed to consider the potential of its support to the *mujahidin* to backfire.

As noted previously, by the beginning of the 1990s, a series of events refashioned the international security landscape. First, the Soviet Union dissolved, effectively ending the Cold War. This led to a re-evaluation of nuclear doctrines and opened discussions around the security of nuclear facilities, materials, and weapons, spread out throughout the eastern bloc. This also left the *mujahidin* armed and without a cause in Afghanistan. In 1990, Saddam Hussein's Iraq invaded and annexed Kuwait. The U.S.-led coalition forces intervened in response to this act of aggression in the First Persian Gulf War, codenamed Operation Desert Storm. Saudi Arabia played a key role in the war by deploying its forces and allowing the United States to deploy its forces on its territory. The war provided the *mujahidin* with a rationale for jihad and a new *raison d'être*. They began to construct a narrative, denouncing U.S. and broader western intervention in Muslim affairs and the passivity and cooperation of 'puppet' regimes, such as the Saudi monarchy, with the 'imperialists'. These events continue to shape Al-Qaeda's narrative.

'In the past, every terrorist *organization* recruited from a single national base or people. Al Qaeda seeks members from all parts of the vast Sunni world'.¹¹⁹ This key difference between Al-Qaeda and previous terrorist groups sheds light on the importance of developing a solid Islamic narrative. Indeed, where other groups could utilise nationalism as a motivating factor, Al-Qaeda's diversity left a void for the organisation's leadership to fill. Hence, the flag raised by Al-Qaeda to rally the recruits is not national but religious: 'the first step in achieving Al Qaeda's goal would be to strengthen rebel Islamic groups in various states of the Sunni world'.¹²⁰ This could only be achieved by creating a solid Islamic narrative, based on legal justifications and

Weaver, Mary Anne (2002), *Pakistan – In the Shadow of Jihad and Afghanistan*. New York: Farrar, Straus and Giroux. P. 3

¹¹⁹ Rapoport, David in Kegley, Charles (2003), 45

¹²⁰ *Ibid.*

political incentives. This is especially the case of ‘recruitment and fundraising, vital to the MAK and, later, Al-Qaeda’s survival and to operate successfully, required a vision and a narrative, which key figures developed. The recruits ‘faced hardship and sacrifice.’¹²¹ Therefore, their faith was key in keeping them committed.

On 23 February 1998, what is commonly known as ‘The Islamic Front’s Declaration to Wage Jihad Against the Jews and Crusaders’ was published in the newspaper *Al-Quds Al-Arabi*. The declaration was signed by bin Laden, Zawahiri, Ahmad Taha, Sheikh Hamza, and Fazlur Rahman. It identified three ‘crimes and sins committed by the cans [which] are a clear declaration of war on Allah.’¹²² These include: the ‘occupation’ of ‘the lands of Islam in its holiest places’, the sanctions imposed on Iraq, and the weakening and division of Arabs to ‘guarantee Israel’s survival’.¹²³ These reasons provided the grounds for the issuance of ‘a decree to all Muslims’. The decree was ‘the ruling to kill the Americans and their allies-civilian and military’, describing it as an individual obligation incumbent upon every Muslim who can do it’.¹²⁴ The basis for this ruling, the group argued, is held in a number of verses, including those referred to in chapter Three: 9:36,¹²⁵ 8:39,¹²⁶ and 4:75.¹²⁷ Likewise, the same year, another statement confirmed that, ‘every American man is an enemy-whether he fights us directly or pays his taxes.’¹²⁸

An essay entitled ‘Moderate Islam Is A Prostration to the West’, ‘authorized or written by Osama bin Laden himself’,¹²⁹ argues that Muslims should ‘spread *sharia* law to the world – that and nothing else’ and that their defence is ensured ‘through *jihad* – not dialogue and coexistence’.¹³⁰ Indeed, ‘practically everything valued by the immoral

¹²¹ Jenkins, Brian (2002), 5

¹²² Ibrahim, Raymond (2007), *The Al Qaeda Reader*. New York: Doubleday. P. 12

¹²³ *Ibid.*, 11-12

¹²⁴ *Ibid.*, 13

¹²⁵ *Qur’an*, 9:36 (Surat Al-Tawbah): ‘Indeed, the number of months with Allah is twelve [lunar] months in the register of Allah [from] the day He created the heavens and the earth; of these, four are sacred. That is the correct religion, so do not; ‘wrong yourselves during them. And fight against the disbelievers collectively as they fight against you collectively. And know that Allah is with the righteous [who fear Him].’

¹²⁶ *Ibid.*, 8:39 (Surat al-Anfal): ‘And fight them until there is no fitnah and [until] the religion, all of it, is for Allah. And if they cease - then indeed, Allah is Seeing of what they do.’

¹²⁷ *Ibid.*, 4:75 (Surat Al-Nisa): ‘And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?"’

¹²⁸ Ibrahim, Raymond (2007), 281

¹²⁹ *Ibid.*, 17

¹³⁰ *Ibid.*, 33

West is condemned under *sharia* law.¹³¹ The essay further promotes offensive jihad by claiming that: 'it is, in fact, part of our religion to impose our particular beliefs upon others.'¹³²

Zawahiri's 2002 essay, 'Loyalty and Enmity: An Inherited Doctrine and A Lost Reality', interprets the 'doctrine of Loyalty¹³³ and Enmity¹³⁴ in Islam'.¹³⁵ According to Zawahiri, the enemies of Islam have launched a 'Crusading campaign' to 'patch up the tattered fabric that represents the reigning regimes in our lands-in all their corruption and power to corrupt, and their submission to the international, tyrannical powers of the Crusaders and the Jews.' This campaign, Zawahiri argues, is the War on Terror, which attempts to 'wipe out the dividing line between truth and falsehood, till even friend and foe are intermingled.'¹³⁶ Zawahiri argues that friendship with infidels is prohibited and that the *shari'a* 'commands' Muslims 'to battle' them. He claims that there is *ijma'* among Muslim jurists that it is an obligation for Muslims to fight 'those infidels who have usurped the lands of Islam' and that 'this is a duty considered second only to faith'.¹³⁷ As discussed in chapter three, however, while the *Qur'an* states that Muslims are superior¹³⁸ to other peoples, it also grants the 'peoples of the Book' (*ahl al-kitāb*), Jews and Christians, a different status than the pagans Muhammad fought.¹³⁹

A treatise entitled 'Jihad, Martyrdom, and the Killing of Innocents', prepared for the Council of the Jihad Organisation under Zawahiri's supervision, attempts to collect various verses from the *Qur'an*, *ahādīth*, and use *qiyās*, to justify killing oneself and others, particularly innocents, in jihad.

Al-Qaeda's strength lies in its leadership's ability to provide a 'potent but unfocused force [with] a sense of vision, mission, and strategy that combin[es] twentieth century theory of a unified Islamic polity with restoration of the Islamic Caliphate'.¹⁴⁰ This sense of vision and mission heavily relies on the notion of a divine mandate. The *leitmotif* of jihadist groups can be found in the justification of their actions as being

¹³¹ *Ibid.*, 37

¹³² *Ibid.*, 51

¹³³ *Wala'*

¹³⁴ *Bara'*

¹³⁵ Ibrahim, Raymond (2007), 66

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*, 100

¹³⁸ 3:100

¹³⁹ 3:113/199/Tabatabai, Allameh, Vol. 9, 315

¹⁴⁰ Jenkins, Brian (2002), 4

carried out in the name of God, His Prophet, and the Muslim community. Pauletta Otis explains that, 'Religion's emergence as a critical dimension of twenty-first century warfare is a result of at least three principal dynamics.' She identifies these as '(1) the seeming failure of other ideologies and institutions; (2) the power of religion in providing ideological resources supporting social justice; and (3) the power of religion in providing an ideological basis for social coherence and comprehensiveness.'¹⁴¹ The core argument presented by jihadist terrorist groups lies in 'the claim that some killing is commanded by God.' In other words, 'much like the Christian crusaders in the eleventh century, religiously oriented terrorists often claim that they have been authorized by God to launch terrorist attacks'.¹⁴² Such claims are, however, problematic, as the notion of a divine mandate 'is impossible to disprove, it can be claimed by almost anyone, and it can be used to justify anything. There is no limit whatsoever on what God can reputedly "command"'.¹⁴³ As noted by Alex Bellamy, 'the divine mandate created problems for medieval and early Renaissance just war thinkers precisely because it could be invoked to justify anything'. As discussed in Chapter Two, Vitoria disputed the notion of a divine mandate 'on the grounds that there was no precedent and no direct proof that God had in fact commanded particular wars.' As a Christian theologian, Vitoria did not contest the 'possibility that God could theoretically issue a mandate for war but insisted that those claiming such a mandate provide evidence of its existence.' This idea continues to be valid and relevant today as terrorists use it to justify their operations. Hence, 'Religious believers must accept the theoretical possibility that God could issue a mandate for war, but those invoking such a mandate are required to prove its existence by more than just faith.' Providing such evidence remains challenging, however, because 'today, as in Vitoria's time, there remains no precedent for such a mandate, it must be admitted that the likelihood of a terrorist group furnishing compelling evidence to support its claim to a divine mandate is, at best, very slim.'¹⁴⁴

Nevertheless, Al-Qaeda has offered compelling evidence of its divine mandate to its constituency. Its vision 'had operational utility. It recast the numerous local conflicts into a single struggle between an authentic Islam and a host of corrupt satraps who

¹⁴¹ Seiple, Robert A., Hoover, Dennis R (2004). *Religion & Security: The New Nexus in International Relations*. Laham: Rowman & Littlefield Publishers, Inc. P. 16

¹⁴² Bellamy, Alex (2008), 48

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

would collapse without the backing of the West'. This provides a 'single, easily agreed upon enemy, whose fate, when confronted with a unified Islamic struggle, would be the same as that of the Soviet Union.' Al-Qaeda's vision and successful attacks in the 1990s, including in Africa, allowed the network to become 'the banner carrier of Islam's response to past defeats, frustration, humiliation, resentment, and fear.'¹⁴⁵ Al-Qaeda's success becomes a vicious circle, where 'each [successful] attack becomes a recruiting poster, demonstrating the power of al Qaeda's interpretation of Islam, attracting more recruits.'¹⁴⁶ Indeed, many throughout the Muslim world 'who endorse AQ's actions see it like this: how many people has the west killed? So, these attacks are justified, they are nothing in comparison' to what they believe to be the west's devastation of Muslim lands.¹⁴⁷

The bombings of the World Trade Center in 1993, the bombings of the U.S. embassies in Tanzania and Kenya in 1998, the attack against the USS Cole, and Project Bojinka¹⁴⁸, were among these events. These events, supported by the aforementioned statements and *fatāwā* shed light on the group's view of *shari'a*, the west, the use of violent means, and the mass-killing of civilians. As noted in chapter Three, these *fatāwā* are not legally binding on Muslims, as these figures do not have the clerical status and therefore, the competence, to interpret the law and issue such decrees.

Nevertheless, the true import of the fatwa as a genuine religious instrument for motivating terrorism has not been adequately appreciated. Many Western analysts tend to dismiss fatwas as little more than cynical religious terminology applied to political propaganda. This characterization, however, does not do justice to the painstaking process of legal reasoning invested in them or the religious gravity with which their authors and their target audience treat them.¹⁴⁹

The 9/11 attacks were popular in the Arab world, where many celebrated what they considered as an achievement.¹⁵⁰ Even though a number of Muslims and Islamic institutions denounced the attacks; many applauded Al-Qaeda's tactics and approved of its aspirations. This was particularly the case in Saudi Arabia, where the events were met with praise and admiration. In fact, Abdel Bari Atwan, recounting his encounter with 'a close relative of the late King Fahd of Saudi Arabia', noted that 'she confided to

¹⁴⁵ Jenkins, Brian (2002), 4

¹⁴⁶ *Ibid.*, 5-6

¹⁴⁷ INT004SNT

¹⁴⁸ A plot to blow up twelve planes flying from Asia to the west coast of the United States, tailored by Khalid Shaikh Muhammad.

¹⁴⁹ Bar, Shmuel (2006), xiv

¹⁵⁰ Jenkins, Brian (2002), 7

[him] that she greatly admired bin Laden and the recent al Qaeda assault on the US', an enthusiasm 'shared by the general public of the kingdom.'¹⁵¹ He further notes that 'After 11 September a Saudi intelligence survey found that 95 per cent of a sample educated Saudis aged twenty-five to forty-one supported bin Laden's cause.' What is more, 'in December 2004, CNN reported that a poll in the kingdom had found bin Laden's popularity exceeded that of King Fahd.'¹⁵² Indeed, as noted in the introduction, many Muslim countries have experienced violent conflict throughout the twentieth and twenty-first centuries. For this reason, a violent solution seems to be viewed as the only viable one. 'Extreme violence, as it has been ongoing in the Middle East, doesn't lead people to think that a moderate solution is going to take care of everything.'¹⁵³

Al-Qaeda, 'probably anticipated that the attack would provoke a major military response, which it could then portray as an assault on Islam.' This would lead the Muslim world to rise against the west and an influx of new recruits. However, Al-Qaeda's leadership 'repeated the folly of terrorists past', a strategy that 'has seldom worked' and did not reveal successful this time either.

In some respects the nomadic Arabs had a high ideal of conduct, but they had no idea whatsoever of a minimum standard of decent behaviour towards all men, simply because they were men. They had no conception of a universal moral law of the Kantian type. There were customary duties and obligations within the tribe (and this included those attached to the tribe as confederates, clients, or slaves); related to these matters was an ideal of honourable conduct. Outside the tribe, however, there were no duties or obligations. You could do what you liked with an unprotected stranger. When you were at war with another tribe, it was a case of "nothing barred." The only restraints on your behaviour towards an enemy or even a stranger were those set by fear of retaliation or fear of supernatural powers.

Now the Islamic community or *ummah* was thought of as a tribe.¹⁵⁴

This description of the Arab nomadic and tribal mentality, which fashioned the Islamic notions of the *ummah*, sheds light on Al-Qaeda's approach to the 'House of Islam'. Al-Qaeda's main goal is to mobilise all Muslims worldwide and to unify 'the House of Islam' to combat 'the House of War'. However, the notion of 'global *jihad*' waged by the House of Islam against the House of War is problematic. Indeed, as stressed in Chapter Three, the *shari'a* prescribes limited warfare. In fact, 'waging outright and comprehensive war appears to have no basis in Qur'anic text; on the contrary, conflicts were seen as having clear boundaries, waged to ward off aggression and undertaken in a

¹⁵¹ Atwan, Abdel Bari (2008). *The Secret History of al Qaeda*. Berkeley: University of California. P. 150.

¹⁵² *Ibid.*, 150-151

¹⁵³ INT004SNT

¹⁵⁴ Watt, Montgomery (1956), 317-328

humane way'. The notion of distinction is at the heart of this limited discussion, 'sparing those who do not themselves participate in the war (Qur'an 60:8).'¹⁵⁵ Nevertheless, this dichotomy is at the very core of Al-Qaeda's narrative, which opposes the *ummah* to the rest of the world, seeking to unify the House of Islam. Zawahiri sees the unity of the *ummah* as the prerequisite to the jihadist movement's success. The network, especially Al-Qaeda core, has tried to develop a strategy and tactics. This strategy is founded on the idea that the movement 'must come closer to the masses.' Three factors are put forward to rally Muslims around Al-Qaeda's flag: a trustworthy leadership, a 'clear enemy to strike at', and breaking the 'shackles of fear and the impediments of weakness in the souls'.¹⁵⁶

To conclude, '[the] careful and long-standing efforts to legitimize their actions to the wider Muslim community [...] suggest that al-Qaeda seeks some level of approval and support from a constituency'.¹⁵⁷ In fact, 'the primary reason al-Qaeda turned from targeting the "near enemy" (apostate Muslim governments) to the "far enemy" (the United States) was to gain support from and mobilize the Muslim masses.' Browne argues that this 'shift was the result of a pragmatic examination of past failed jihadi campaigns', which had not been successful due to lack of support from the population.¹⁵⁸ What sets Al-Qaeda apart from other *jihadi* movements and organisations is the 'attempt to enlist as many of the world's 1.3 billion Muslims [...] as possible'. To be sure, the network's goal is to 'wag[e] a war for the hearts and minds of Muslims'.¹⁵⁹ The network has sought to achieve this end by justifying all its endeavours in Islamic terms. Its nuclear discourse is part of this greater Islamic narrative. In many ways, however, the nuclear discourse is a piece of the broader narrative, justifying the killing of noncombatants.

Al-Qaeda's Islamic nuclear discourse

¹⁵⁵ Sonbol, Amira, in Popovski, Vesselin; Reichberg, Gregory; and Turner, Nicholas (2009), 290
Qur'an (60:8): 'Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly.'

¹⁵⁶ *Ibid.*

¹⁵⁷ Browne in Russel and Wirtz (2008), 79

¹⁵⁸ *Ibid.* 80

¹⁵⁹ *Ibid.*, 82

As mentioned previously, between 1999 and 2001, Al-Qaeda conducted basic chemical, biological, and radiological training courses in its training camps.¹⁶⁰ While taking practical steps effectively to develop the recruits' ability to conduct attacks using unconventional weapons, the network's core leadership also developed a nuclear discourse. As noted in Chapter Three, this discourse is fashioned in Islamic terms and around the central idea of collective guilt. It utilises 'democracy' as the basis for this collective guilt, arguing that because western societies are democratic, every citizen is responsible for the actions of the government. Therefore, indiscriminate attacks are legitimate against these societies. Al-Qaeda core also argued for the sole acquisition of nuclear weapons. In his interview with *Time* magazine on 24 November 1998, bin Laden stated that 'acquiring weapons (WMD) for the defense of Muslims is a religious duty.'¹⁶¹ As discussed further, the possession of nuclear weapons for a non-state actor would have the same 'benefits' as for state actors in some instances. Notably, the traditional proliferation drivers of prestige and security, enumerated in the introduction, could be applied to non-state actors. Yet, Mowatt-Larssen argues that terrorist organisations would not simply acquire such weapons as a deterrent or for prestige. Instead, if successful, they would use the weapons immediately, as keeping them would be costly and dangerous.¹⁶²

As discussed in Chapter Three, the network's nuclear discourse is not only based on general statements supporting the acquisition or use of nuclear weapons but also *fatāwā*. While neither bin Laden nor Zawahiri had the religious authority to issue such a religious edict, Al-Qaeda's constituents and those who subscribe to the organisation's message respect the two men's authority. For this group of believers, the use of WMD is 'pre-justified ... on religious grounds'. Nevertheless, the *fatwā* remains void of religious authority. Hence, perhaps in an attempt to legitimise it, Al-Qaeda began 'making probes to quietly obtain a fatwa from clerics in Saudi Arabia to support what appeared to be a significant shift in tactics', thereby, taking steps to substantiate the use of WMD on religious grounds'.¹⁶³ The issuance of authoritative religious edicts by respected Islamic figures would allow the group to legitimise its endeavours and cause, expand its audience, thereby convincing new recruits to join their struggle, and to

¹⁶⁰ Mowatt-Larssen, Rolf (2010), 13

¹⁶¹ *Ibid.*

¹⁶² INT004SNT

¹⁶³ Mowatt-Larssen, Rolf (2010), 31

convince potential donors to contribute to their plans financially. Therefore, Al-Qaeda core commissioned a number of clerics to support and legitimise its stance on the procurement and use of WMD.

Radical Saudi clerics Nasir Sheik al-Fahd, Ali al-Khudayr, and Ahmed al-Khalidi had drawn up and co-signed a religious ruling (fatwa) authorizing the use of WMD against the U.S. and U.K. Nasir al-Fahd, a senior Muslim cleric who is closely associated with Al Qaeda, had written dozens of books and publications containing religious edicts against the U.S. and anyone cooperating with it. Among his well-known pronouncements is that “anyone assisting the Americans is an infidel.”¹⁶⁴

Conversely, Abu Shihab al-Kandahari published ‘Nuclear War is the Solution for the Destruction of the United States’ in 2002. This publication was notable due to its being the first instance of such a threat being publically issued by the organisation’s supporters and, ‘a figure known to have been close to the propaganda apparatus of Global Jihad.’¹⁶⁵

Likewise, former Al-Qaeda trainer, Abu Mus’ab Al-Suri (also known as Setmariam)¹⁶⁶, argued for the use of CBRN weapons, including nuclear and dirty bombs, in 2004, after a \$5 million reward was issued by the United States ‘for information leading to his capture or killing.’¹⁶⁷ Al-Suri lamented Al-Qaeda’s failure to use WMD during on 9/11.¹⁶⁸ He further sent requests to unlikely allies, communist DPRK and Shiite Iran, to continue the development of their nuclear programmes. This attempt to form such unlikely alliances held its roots in Suri’s belief that the ‘bigger devil’ [the west] should be overcome by all means, even if they include cooperation with Shiite and communist regimes. It is worth noting that Shiism is considered as ‘unholy’ as communism by fundamentalist Sunnis, including Al-Qaeda.¹⁶⁹

As noted in Chapter Three, Islamic law heavily relies upon the equivalent of precedents (*qiyās*). Al-Qaeda leadership has tried to justify its nuclear ambitions in Islamic terms by using precedents to legitimise the acquisition and use of nuclear weapons under *shari’a*. The network supports its CBRN ambitions by stating that the Prophet and caliphs did not always wage war according to the principle of limited warfare, at times

¹⁶⁴ *Ibid.*, 32

¹⁶⁵ Paz, Reuven (2005), 77

¹⁶⁶ Al-Suri was arrested by Pakistani police forces in November 2005. According to Paul Cruickshank and Mohannad Age Ali, ‘no other individual has done more to conceptualize Al Qaeda’s new strategy after 9/11.’ P. 1

Cruickshank, Paul. Hage Ali, Mohannad (2007), ‘Abu Musab Al Suri: Architect of the New Al Qaeda’. *Studies in Conflict & Terrorism*, 30:1-1-14, 2007. P. 7

¹⁶⁷ Cruickshank, Paul. Hage Ali, Mohannad (2007), 7

¹⁶⁸ Mowatt-Larssen, Rolf (2010), 14

¹⁶⁹ Paz, Reuven (2005), 82

using indiscriminate means and methods to inflict mass casualty on their enemies. As Chapter Six demonstrates, precedents are also relied upon in the Iranian context to justify the prohibition of nuclear weapons under Islamic law. According to the Iranian position, the Prophet and Imams refrained from poisoning bodies of water and using fire, as these are indiscriminate tactics, which also destroy the environment.¹⁷⁰ Al-Qaeda core argues the opposite. Abu Bakr Naji writes: ‘we only accept that our policies in any jihadi action are Sharia policies, unless the Sharia permits us to use the plans and military principles of non-Muslims in which there is no sin.’¹⁷¹ He notes that *jihad* needs to be practical and jihadists must not refrain from using violence. He supports this point by stating that, ‘(Abu Bakr) and Ali b. Abi Talib (may God be pleased with them) burned (people) with fire, even though it is odious, because they knew the effect of rough violence in times of need.’¹⁷² He further refers to the Prophet’s campaign against the Jewish tribe of Bani Qurayza (discussed in Chapter Three), stating that the current times call for such actions and massacre.¹⁷³ Naji qualifies the ‘sequential strikes against America, ending with the strike of September’ as ‘deserved according to the sharia’.¹⁷⁴ He criticises ‘some of the small groups in the previous stages of jihad’, which ‘ignored these military principles not out of fear of contradicting the Sharia; rather, their neglect was facilitated by random behavior and rigidity, along with the desire of the praiseworthy youths to attain unto the station of martyrdom as soon as possible.’¹⁷⁵

Implications of the weakening of Al-Qaeda core

Over a decade after 9/11, ‘there is a remarkable lack of consensus among analysts’ assessments of al Qaeda’s current condition.’¹⁷⁶ As discussed throughout the chapter, a number of factors provide evidence of the network’s increasing weakening. ‘The architects of 9/11 have been captured or killed. Al Qaeda’s founder and ritual leader is dead. Its remaining leadership has been decimated. The group’s wanton slaughter of Muslims has alienated much of its potential constituency.’ What is more, the group has

¹⁷⁰ Feirahi, Davood, in (2009), 272-274

¹⁷¹ Naji, Abu Bakr (2006), ‘The Management of Savagery: The Most Critical Stage Through Which the Umma Will Pass. Institute for Strategic Studies at Harvard University. Translation by William McCants. Para. 28

¹⁷² *Ibid.*, para. 31

¹⁷³ *Ibid.*, para. 32

¹⁷⁴ *Ibid.*, para. 18

¹⁷⁵ *Ibid.*, para. 28

¹⁷⁶ Jenkins, Brian (2012), 1

been unable 'to carry out a significant terrorist operation in the West since 2005, although it is still capable of mounting plausible, worrisome threats.'¹⁷⁷ The advent of ISIS has overshadowed Al-Qaeda. However, a number of reasons enumerated by terrorism experts support the thesis that Al-Qaeda remains a viable threat. These include the impact of the Arab Spring in strengthening the organisation and its ideology,¹⁷⁸ the 'fluidity among the jihadist groups', and its periphery's strength 'though its center has been hollowed.'¹⁷⁹ Since bin Laden's death, Al-Qaeda's operations have been limited to tactical ones, carried out by Al-Qaeda affiliates, while Al-Qaeda central has remained in a semi-dormant state.

Some argue that that it would not be in Al-Qaeda's interest to conduct WMD attack, as the 'current domestic and international political situation is more favorable now than could be expected after a WMD attack.'¹⁸⁰ Such an attack would even be counterproductive for the organisation due to two reasons. First, it would provide the United States with 'an even greater freedom of action than that granted after the September 11 attacks.' Second, 'jihadi and fundamentalist groups would either turn further away or be crushed by the international response.'¹⁸¹ It could also be argued that while the acquisition of nuclear weapons would have a positive outcome for the organisation, its use would have the opposite effect, leading the majority of Muslims to distance themselves from the group's aspirations and ideology, and ultimately leading to its complete delegitimation. Hence, some observers and experts believe that Al-Qaeda's perceived weakness could lead the group to carry out its most spectacular and devastating operations yet.¹⁸² Two contradictory theories have been developed by scholars to explain the potential impact of a nuclear-armed jihadi group. On the one hand, some argue that given the indiscriminate and disproportionate nature of a nuclear attack, the procurement and use of nuclear weapons would only deligitimise the group among Muslims.

¹⁷⁷ *Ibid.*, 2

¹⁷⁸ Jenkins suggests that, 'al Qaeda has scrambled to correctly interpret fast-moving events, adjusting its messaging to address the new circumstances. It has firmly aligned itself with the uprisings while interpreting events in the context of its own struggle.'

Ibid., 6

¹⁷⁹ *Ibid.*, 1-2

¹⁸⁰ Browne in Russel and Wirtz (2008), 96

¹⁸¹ *Ibid.*, 96

¹⁸² Stern, Jessica (1999), 83

Other still argue that given Al-Qaeda's current status as 'more of a nuisance than a serious threat' and its 'waning' influence, the organisation could choose to go down the nuclear path to assert itself as 'still relevant'. By doing so, it would show that it remains a 'predominant international threat' and that it is on a par with nation-states and should be respected as such.¹⁸³ On the other hand, it is argued that the prestige model, developed in the context of the nuclearisation of state actors, would also be applicable to non-state actors and would rather garner support. Thus, the acquisition of nuclear weapons could lead to Al-Qaeda's rebirth. As the group's legitimacy and influence declines, the 'prestige' factor becomes more relevant. Therefore, the organisation's ability to procure and successfully detonate a nuclear weapon could generate support and facilitate fundraising and recruitment by it thanks to an enhanced prestige.¹⁸⁴ In fact, that Zawahiri updated Fahd's 2003 *fatwā* in 2008 'shows that Zawahiri thinks that there is a need to think about nuclear weapons.'¹⁸⁵ The assassination of Al-Qaeda's key leaders might inspire its new leadership to launch a 'spectacular' attack, not only showing that the group is still in business and still to be taken seriously, but also to 'maintain the integrity of the group or to meet their own psychological needs.' This is especially the case as 'terrorists might resort to more lethal tactics to avenge the deaths of members of their group or to retaliate against perceived slights.'¹⁸⁶

A number of other groups, including Al-Qaeda affiliates have proven more effective in conducting terrorist attacks. They include Lashkar-e Jhangvi (LeJ), which 'has driven much of this violence in Pakistan.'¹⁸⁷ These groups have a more tactical and local approach than Al-Qaeda. 'Where once Islamist militant organizations embraced al Qaeda core's global ideology [...], the targeting of internationally focused militants by the United States and its partners [...] appears to have fomented a return to more locally focused ideologies.'¹⁸⁸ Hence, the threat in the region seems to become more focused around 'domestic enemies, be they local governments, ethnic populations, or religious groups.'¹⁸⁹ This in turn could mean that nuclear terrorism is becoming less of a threat in the region, as terrorism in South Asia re-shifts from post-modern to modern terrorism.

¹⁸³ Masse, Todd (2011), 115

¹⁸⁴ Ackerman, Gary. Tamsett, Jeremy (2009), 194-95

¹⁸⁵ INT004SNT

¹⁸⁶ Stern, Jessica (1999), 83

¹⁸⁷ Sanderson, Thomas. Fellman, Zachary. Nelson, Rick. Sanok, Stephanie. Wise, Rob. 'Trends in Militancy across South Asia', Center for Strategic and International Studies (CSIS). April 2013. Lanham: Rowman & Littlefield Publishers, Inc. P. 11

¹⁸⁸ *Ibid.*, 12-13

¹⁸⁹ *Ibid.*, 13

However, the advent of ISIS, a group with a pan-Islamic agenda, employing more violent means than most other terrorist groups, may change this. In light of this, Al-Qaeda core could seek to procure nuclear weapons for a ‘spectacular come back’. It could do so thanks to its regional affiliates. This represents a great challenge, given the Pakistani state’s fragility and the concerns over the security of its nuclear arsenal and facilities. These issues are discussed in the next chapter.

Effectiveness of Al-Qaeda’s nuclear discourse

Despite a lack of a total condemnation by Muslims,¹⁹⁰ Al-Qaeda’s leadership has not been successful in convincing Muslim constituencies that its actions are indeed legitimate. This is due to two main factors. First, not only are the methods used by the organisation are not endorsed by the majority of Muslims, but they are even seen as contrary to the faith. Second, Al-Qaeda’s leadership is not seen as an authority competent to interpret Islamic law by the majority of believers, hence the *fatāwā* issued by the Bin Laden and Zawahiri do not convince the audiences the group has tried to reach. In fact, ‘only by their own claims does al-Qaeda possess this authority, because they do not possess widespread religious legitimacy.’¹⁹¹ Even ‘groups [which have been] historically at odds with the West (such as Hezbollah and Hamas), practitioners of suicide terrorism’ and other ‘terrorist’ organisations ‘issued denunciations of al-Qaeda and its attacks’ after 9/11. ‘What is striking in many of these condemnations is the assertion that al-Qaeda’s attacks violate Islamic law by targeting civilians.’¹⁹² These condemnations rose from even the least likely *jihadi* authorities, including Seyyed Mohammad Hussein Nasrallah, Hezbollah’s spiritual leader, who ‘debunk[ed]’ the ‘transnationalized jihad’ of Al-Qaeda, despite he himself being ‘responsible for more American deaths than any other terrorist group’ prior to 9/11.¹⁹³ ‘The differences between bin Laden and Nasrallah are obvious to the Arab masses, as the difference between al-Qaeda and Hezbollah. One group manipulates jihad while the other practices jihad.’¹⁹⁴ Another factor contributing to the lack of Muslim support for Al-Qaeda’s endeavours lies in ‘pragmatic fear’ or the fear of western retaliation.¹⁹⁵ As discussed

¹⁹⁰ INT004SNT

¹⁹¹ Browne in Russel and Wirtz (2008), 86

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ Sonbol, Amira, in Popovski, Vesselin; *et al.* (2009), 301

¹⁹⁵ Browne in Russel and Wirtz (2008), 86

previously, the majority of Saudis, including within the government, approved of the 9/11 attacks. Yet, none would openly endorse the attacks. Interests trump ideology, leading Al-Qaeda's position to be a minority one, if only due to the fear of retaliation. As such, the *fatāwā* issued by Al-Qaeda's leadership and those issued by radical clerics, many of whom are in Saudi Arabia and essentially 'commissioned' by the terrorist network, seem to have only had a limited impact. The decrees are an attempt for Al-Qaeda to justify its actions and advertise them as in accordance with the Islamic tradition. In addition to serving to help secure the support of constituencies, the Islamic discourse also helps justify the network's actions to its own members, many of whom are devout and seek the authorisation of relevant authorities to take action.

Since the mainstreaming and globalisation of violent jihad by Al-Qaeda, the concept of jihad, central to the Islamic faith, has become taboo even amongst Muslim populations, who try to distance themselves from it. Imams and religious leaders avoid engaging in the debate, for fear of being labelled as extremists. The term *fatwā* has also become distorted in western views and generally has a negative connotation (often associated with war, assassination, and terrorism), very different from its original legal meaning.

On the one hand, many Muslims express their disapproval of Al-Qaeda and other terrorist groups' actions and ideology. This is due to 'Muslim publics [being] very discriminating in what they see as justified violence.'¹⁹⁶ It explains why 'in the wake of September 11, Bin Laden did not take immediate credit for what are the most spectacular terrorist attacks of all time.' This 'behaviour indicates they were aware the attacks were having an adverse effect on their constituency.' Therefore, Bin Laden 'attempted to justify the attacks first as a reprisal for Muslim deaths. He then attempted to characterize the targets as "icons of military and economic power" instead of civilian targets.'¹⁹⁷ As argued throughout this chapter, even those Muslims who endorse Al-Qaeda's actions are reluctant to voice this view, fearing retaliation from the west or alienation in their home-countries. Another key challenge to Al-Qaeda's attempt to galvanise support from Muslims, and specifically Arabs, lies in identity politics. Islam, while the primary identity-shaping factor in many Arab states, does not constitute the only one. In fact, 'identity has a range of meanings in the Arab world, and the impact of

¹⁹⁶ Browne in Russel and Wirtz (2008), 90

¹⁹⁷ *Ibid.*, 93

globalization depends on context – that is, national and individual circumstances’.¹⁹⁸ Hence, several components shape Arab identity. On the one hand, ‘national identity provides a platform for the promotion and preservation, by the state and its agents, of specific sets of values.’ On the other hand, ‘tribal, religious, and other sectarian demarcations remain influential, of course, and are often subversive to the power of the state, especially in times of heightened social and political stress.’¹⁹⁹ Hence, Al-Qaeda’s call for a unified Muslim *ummah*, which would transcend boundaries, does not resonate with Muslims across the globe. ‘For the overwhelming majority of Arabs, the notion of a geographically delimited and formally institutionalized national identity is consistent, at an individual level, with the desire to be “modern” as well as Arab and, in a growing number of cases, self-consciously Muslim.’²⁰⁰ What is more, in some instances, chiefly in Egypt, ‘in place of pan-Arabism, one can observe heightened level of Egyptian national sentiment-exaggerated’ in some cases.²⁰¹ Additionally, support for Al-Qaeda is not necessarily caused by religion.

Support for groups like al Qaeda is born from political, social and economic circumstances that people find unacceptable. Al Qaeda offers them the chance to fight back – something that, for the Muslim world as a whole, has not been possible for a very long time. Muslims might not like what al Qaeda has to offer in the long term – how many of them really want to live under a Taliban-style regime? – but that is not the issue at present.

On the other hand, Al-Qaeda’s efforts have not been entirely unsuccessful. Indeed, prominent clerics have not gathered to issue clear, comprehensive, and total statements rejecting Al-Qaeda’s actions and ideology.²⁰² In fact, as suggested before, the 9/11 attacks were facilitated by ‘the 1998 embassy bombings in Nairobi and Dar-es Salaam [which] produced a great increase in support for al Qaeda in Saudi Arabia – more than 11,000 recruits headed for the training camps in Afghanistan between 1998 and 2001.’²⁰³ This is partly due to ‘the Saudi regime as well as Saudi society [being] underpinned and legitimized by Wahhabi²⁰⁴ doctrine.’²⁰⁵ This distinguishes Saudi

¹⁹⁸ Bowker in Stetter (2012), 225

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, 231

²⁰² INT004SNT

²⁰³ Atwan, Abdel Bari (2008), 169

²⁰⁴ Wahhābi Islam is a fundamentalist branch of Sunni Islam, established by eighteenth century Islamic thinker Mohammad ibn Abd al-Wahhāb based on the works of Ibn Taymiyyah and Ahmad ibn Hanbal. While this school of thought is the predominant one in Saudi Arabia, it is controversial and criticised by other Islamic schools of thought, both Sunni and Shiite. It is widely seen as one of the most fundamentalist branches of Islam.

²⁰⁵ *Ibid.*, 154

Arabia from other Muslims countries, which have embraced more moderate schools of thought, including countries in the Maghreb, Levant, and much of the Middle East. In fact, the ‘complex interdependence of Al Saud and Wahhabism has its roots in the very foundation of Saudi Arabia as a nation-state.’²⁰⁶ Following 9/11, Saudi Arabia undertook to support the United States in its War on Terror, which helped make Al-Qaeda even more popular in the kingdom.²⁰⁷ ‘It has often been claimed that the Saudi security services themselves harbor many al Qaeda sympathizers. According to Saad al-Faqih the official figures...attest to this.’²⁰⁸ The Saudi government has been under attack by Al-Qaeda core leadership, including bin Laden, who have denounced the kingdom’s leaders as corrupt. Still, ‘the Saudi regime has made fitful attempts to bring bin Laden back into the fold. In 1996, it offered ‘to return his citizenship in exchange for a public declaration that the king was a true Muslim’ along with financial incentives. Bin Laden rejected the offer.’²⁰⁹ Hence, the reason behind the lack of Saudi subsequent support for Al-Qaeda does not seem to be one based on religious grounds but rather political and strategic ones. Indeed, bin Laden would have been in Al Saud’s good graces if he accepted to endorse the king’s faith and would perhaps even have supported Al-Qaeda if its strategic interests did not require otherwise. The Saudi monarchy judged that its interests lay in its partnership with the United States. This was especially the case when the War on Terror was beginning. Therefore, while the majority of Saudis see Al-Qaeda’s position as valid, the Saudi establishment’s interests have dictated its relationship to the network. First, Riyadh tried to use the network’s popularity by offering a deal to bin Laden. After 9/11, however, despite positive views of Al-Qaeda ‘success’ in perpetrating the attacks, the Saudi monarchy distanced itself from the network to safeguard its interests.

Among Muslim religious scholars who do not necessarily support or oppose *jihadi* movements, few have denounced them as incompatible with Islam. ‘The religious justification has been successful as no cleric has openly and deeply rejected Al-Qaeda’s claims – that means people buy into what they say’.²¹⁰ Such demands ‘meet with reluctance, for social, political, and religious reasons.’ Shmuel Bar breaks these reasons down to a ‘tendency in Islam to search for common ground and to avoid civil war

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, 169

²⁰⁸ *Ibid.*, 172

²⁰⁹ *Ibid.*, 176-177

²¹⁰ INT004SNT

among the ummah', reluctance to condemn operations failing to discriminate against noncombatants (in order not to denounce actions led against Israel or the United States) and more 'modernist' approaches to Islam being outside the mainstream.²¹¹

Former Kuwaiti minister of information Dr. Sa'd Bin Tefla complained that "despite the fact that bin Laden has murdered thousands of innocents in the name of our religion and despite the damage that he has caused to Muslims everywhere...to this date not a single fatwa has been issued calling for the killing of bin Laden, on the pretext that bin Laden still proclaims 'there is no God but Allah'" (i.e., is still a Muslim whose blood is inviolable).²¹²

Conclusion

Experts continue to have divergent views on the threat of nuclear terrorism. In fact, out of the possible CBRN options available to terrorists, the latter (nuclear) is seen as the least likely to occur. Yet, as argued in this chapter, despite much progress on nuclear security, the risk of nuclear terrorism remains real. Indeed, while a number of steps have been taken to minimise, repatriate, and eliminate fissile material across the globe, it remains widespread. According to the Fissile Material Working Group, in 2013, there was enough fissile material globally for 100,000 additional nuclear weapons.²¹³ For these reasons, nuclear security and the threat of nuclear terrorism have gained political momentum since the beginning of the twenty-first century.²¹⁴ Hence, while the international community may not be entirely convinced that the threat of nuclear terrorism is an immediate one, it believes its consequences to be too grave to ignore.

Al-Qaeda's core leadership has reiterated its willingness to gain access to nuclear weapons and even use them. Since 9/11, a number of steps have been taken to weaken Al-Qaeda core, dismantle its leadership, and deter the network. However, whether these efforts have been effective remains disputed. Indeed, the network seems to have adapted to the counter-terrorism efforts led by the United States. Even though a number of its leaders have been killed or removed, the network has effectively adapted to ensure its continuity. In the years following the 9/11 and 7/7 attacks, the network's operations shifted from strategic to tactical with a regional focusing, replacing the global one. After losing Afghanistan, Al-Qaeda's ability successfully to assemble a nuclear weapon

²¹¹ Bar, Shmuel (2006), 97

²¹² *Ibid.*, 98

²¹³ 'A Threat that Demand Action'. Fissile Materials Working Group. *The Bulletin of the Atomic Scientists*. 09/01/2013.

²¹⁴ 'Secretary-General's keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security - "A Global Strategy for Fighting Terrorism".' 10-03-2005.

diminished considerably. Yet, I argued in this chapter argued that the network could use nuclear weapons to regain its status and become a key global player. As concluded by the US Director of National Intelligence, the network ‘probably hopes for a resurgence following the drawdown of US troops in Afghanistan in 2014.’²¹⁵ The advent of ISIS could be another reason for the network to actively seek a devastating attack to solidify its position and show western failure.

Legal and ethical redlines have often been fluid in the face of politics. Jihadist groups and the religious ‘authorities’ endorsing them have often shifted the goalposts: Claiming, for instance, that while targeting civilians is not allowed under the faith, Israelis represent an exception. Al-Qaeda adopted this method from other jihadist groups but pushed the boundary even further, by arguing that representational democracies effectively generate ‘collective guilt’, legitimising the targeting of Americans, regardless of whether or not they have taken part in wars in the Muslim world. The network’s justification in Islamic terms enabled it to recruit those who proceeded to execute its 9/11 and 7/7 attacks. In that sense, this use of *shari’a* has been successful. Likewise, the network has successfully recruited a number of people to assist it with nuclear material and weapon acquisition and procurement, including nuclear scientists.²¹⁶ Yet, Al-Qaeda has fallen short of receiving a consensus-based support from the Sunni world, something it was seeking. In fact, the network’s actions and reading of Islamic law were never seen as legitimate across the Muslim world. Muslims and Muslim scholars have also not categorically rejected the network’s actions and their justification in Islamic terms. Al-Qaeda, like other radical Islamist groups before it, continues to divide the *ummah*.

²¹⁵ Clapper, James R. (2014), 4

²¹⁶ Venter, Al J. (2007), *Allah’s Bomb*. Guilford: The Lyons Press. P. 6

Chapter Five: Pakistan's Islamic Bomb

As mentioned in Chapter Two, Pakistan, one of nine nuclear-armed states, has built its nuclear weapons programme outside the NPT framework. Additionally, the country is one of few not to have signed the CTBT and was the last country (excluding the tests conducted by the DPRK in the past decade) to conduct a nuclear test, in May 1998. Given its status as an Annex II¹ country, this constitutes a great challenge to the Treaty coming into force and, therefore, the non-proliferation regime as a whole. Islamabad further blocked progress on negotiating the FMCT at the 2011 Conference on Disarmament. With 100-120 warheads² and enough fissile material for 200 weapons,³ Islamabad possesses the world's fastest growing arsenal and.⁴

Pakistan's modest nuclear stockpile arouses global concern because Pakistan is also the world headquarters of al Qaeda; its stockpile faces a greater threat from Islamic extremists seeking nuclear weapons than any other nuclear stockpile on earth. Despite extensive security measures, there is a very real possibility that sympathetic insiders might carry out or assist in a nuclear theft, or that a sophisticated outsider attack (possibly with insider help) could overwhelm the defenses. Over the longer term, there is at least a possibility of Islamic extremists seizing power, or of a collapse of the Pakistani state making nuclear weapons vulnerable—though present evidence suggests both of these scenarios remain unlikely.⁵

The aforementioned causes for concern highlighted by Matthew Bunn are exacerbated by a number of other factors. First, the founder of the Pakistani nuclear weapons programme, A.Q. Khan, was also the head of the foremost trafficking and smuggling

¹ As discussed in Chapter Two, Annex II states are those on which the CTBT's entry into force is contingent. They are the forty-four countries, which are home to a nuclear reactor. Those whose ratification is still needed for the Treaty's entry into force are China, the DPRK, Egypt, Iran, Israel, Pakistan, and the United States. While the majority of these states have signed the Treaty and merely need to ratify it in order for it to enter into force, the DPRK, India, and Pakistan have yet to sign it. CTBTO.org.

² Schell, Philip. Kristensen, Hans. 'Pakistani Nuclear Forces' SIPRI Yearbook 2013 (Stockholm: Stockholm International Peace Research Institute, 2013).

³ 'Pakistan' International Panel on Fissile Materials, February 2013.

⁴ A number of issues have been raised by experts regarding the safety and security of the Pakistani nuclear arsenal and facilities. These are reinforced by reports indicating problematic approaches to ensuring nuclear security. First, as discussed further in the following sections, Pakistan's nuclear facilities have been targeted a number of times by suicide bombers. Second, Islamabad 'moves warheads around in unmarked vans with low security profiles down busy roads', which are 'congested and dangerous' in order to 'hide them from the prying satellite eyes of the United States'. Third, 'two retired Pakistani nuclear scientists with pronounced jihadist sympathies had met with ben Laden in the summer of 2001.' The incident led the Strategic Plans Division to undertake to comprehensively monitor of the civilian scientists (including the 2,000 out of 9,000 with "critical knowledge" of weapons manufacture and maintenance'.

Goldberg, Jeffrey and Ambinder, Marc. 'Nuclear Negligence'. *National Journal*. 4-11-2011.

⁵ Bunn, Matthew (2010). 'Securing the Bomb 2010 – Securing All Nuclear Materials in Four Years'. Project on Managing the Atom, Belfer Center for Science and International Affairs, Harvard Kennedy School. *Nuclear Threat Initiative*. P. 28.

network, which proliferated knowhow, weapons' design, and nuclear materials and technology to a number of countries, including the DPRK, Iraq, Iran, and Libya. The network conducted its activities with the alleged knowledge and indirect approval of Islamabad. The government chose to disregard the network's activities, 'because it believed the benefit [Khan] provided outweighed the cost of corruption.'⁶ Second, Pakistan has been a safe haven for a large number of terrorists linked to Al-Qaeda, as well as the Haqqani network (HQN)⁷, LeT⁸, the Lashkar-e Jhangvi (LeJ)⁹, and the Taliban.¹⁰ This means that the threat of nuclear terrorism and the challenges posed to nuclear security are great in Pakistan. This threat becomes even more worrisome in light of the fragility of the Pakistani state.¹¹ As discussed in Chapter Four, Al-Qaeda continues to constitute the greatest and most credible nuclear terrorism threat. Al-Qaeda and Taliban agents continue to operate and have attacked areas close to Pakistani nuclear sites, including Khushab.¹² What is more, groups linked to the Taliban have conducted successful attacks against the Kamra Air Force Base, including a suicide attack 2009 and another attack by militias in 2012.¹³ Third, the country's nuclear technicians have been kidnapped close to the Afghan borders in the past.¹⁴ Such events could reoccur and Pakistani nuclear scientists, engineers, and technicians could be led to

⁶ Khan, Feroz (2013), 370

⁷ HQN 'is one of the most potent insurgent actors within Afghanistan', with deep ties to various actors in the Middle East. It has received funding from the Middle East and established connections with foreign fighters from the Muslim world. The organisation has 'become a prominent insurgent force' and its leadership is based in Pakistan. The group has close ties to a number of jihadist networks and organisations, including Al-Qaeda.

Sanderson, Thomas. Fellman, Zachary. Nelson, Rick. Sanok, Stephanie. Wise, Rob. 'Trends in Militancy across South Asia', Center for Strategic and International Studies (CSIS). April 2013. Lanham: Rowman & Littlefield Publishers, Inc. P. 3

⁸ LeT is a banned (as of 2002) pan-Islamist group, which was established in 1990. Its objective is 'to wrest the disputed Kashmir region from Indian control' and has launched a number of attacks in South Asia, including the infamous 2008 Mumbai attacks. 'Since the mid-2000s, LeT has expanded its regional focus to include Afghanistan' and has connections to the HQN, as well as 'widely believed [...] to maintain close ties to Pakistan's Inter-Services Intelligence.'

Ibid., 4-5

⁹ LeJ was established in 1996 as a militant offshoot of the Pakistani political party Sipah-i-Sahaba Pakistan (SSP) but has evolved to become the 'collective armed wing of various Deobandi terrorist groups.' LeJ's original affiliation, the 'SSP is vehemently anti-Shia', founded to protect Sunni interests in the country following the Islamic Revolution in Iran. The LeJ has conducted a number of terrorist attacks against Shiites.

Sanderson, Thomas, *et al.* (2013), 5

¹⁰ Goldberg, Jeffrey and Ambinder, Marc. 'Nuclear Negligence'. *National Journal*. 4-11-2011.

¹¹ In Stephen Cohen's words: Pakistan's 'economy has failed, its politics have failed, and its army either fails or looks the other way'. Moreover, its 'government is widely considered to be among the world's most corrupt'.

Ibid.

¹² 'Pakistan', the Nuclear Threat Initiative.

¹³ 'Kamra airbase attack: Court martial against 3 PAF officers begins', *The Express Tribune*, 5-11-2013.

¹⁴ 'Pakistan nuclear staff go missing'. BBC, 12-02-2008.

cooperate with terrorists pursuing a nuclear capability under duress. Fourth, as mentioned previously, the fragility of the Pakistani state means that the threat of a coup destabilising the current government or the state failing altogether could lead to scenarios in which nuclear weapons and/or materials would fall in to the hands of terrorists. The country's 'central government has serious trouble controlling the many corners of its territory. Its security services are infiltrated by an unknown number of jihadist sympathizers; a number of jihadist organizations are headquartered there and have relations with the government'.¹⁵ As noted by Feroz Khan, 'Terrorists and violent extremism threaten to impose their will by continuous challenge to state authority.'¹⁶

Nevertheless, if the status quo persists, Pakistani nuclear weapons are likely to continue filling two key functions: deterring India¹⁷ and offering a source of pride for the nation. As quoted by Khan, the Director General of the Strategic Plans Division, Lieutenant-General Khalid Kidawi has suggested that, 'Pakistani nuclear weapons would be used only if the very existence of Pakistan as a state is at stake...Nuclear weapons are aimed solely at India.'¹⁸ Khan further explains that Kidawi envisions several scenarios in which Pakistan would resort to using its arsenal in case deterrence fails. These scenarios include a successful Indian attack and subsequent conquest of a large part of the Pakistani territory, destruction of a large part of Pakistani land and air forces by India, economic strangling or political destabilisation of Pakistan by India.¹⁹ Khan quotes Musharraf stating that nuclear weapons would only be used as last resort. 'Nuclear weapons could only be used if Pakistan is threatened with extinction'.²⁰ However, it is not clear what role the growing Pakistani tactical nuclear weapons play in Pakistani calculations.

This chapter sheds light on the relationship between religion and nuclear policy in Pakistan. Indeed, given the reasons enumerated above, it is crucial to understand the relationship between religious identity and security in the country, especially in the case of its nuclear weapons programme. These reasons include Pakistan's fragile statehood, growing nuclear arsenal, and the continuous presence of radical elements both as non-

¹⁵ Goldberg, Jeffrey and Ambinder, Marc. 4-11-2011.

¹⁶ Khan, Feroz (2013), 377

¹⁷ Pakistan does not only seek to deter an Indian nuclear attack but also conventional ones. The development of strategic and tactical nuclear weapons is aimed at balancing India's conventional superiority.

¹⁸ Khan, Feroz (2013), 351

¹⁹ *Ibid.*, 351-352

²⁰ *Ibid.*, 352

state terrorist groups, including Al-Qaeda agents, but also within the government. This is particularly the case, as not only does 'jihadism' now threaten 'the state of Pakistan itself,' threatening 'a Talibanized make-over', the country will also 'continue to remain a haven for *jihadism* unless the perception of the military changes.'²¹ However, this trend does not seem to be changing and 'the Pakistani military *de facto* considers Islamist radical groups as part of the security establishment and uses them accordingly'. This chapter demonstrates that this relationship between Islamist groups and Islamic parties and the military has been instrumental in the country's approach to the nuclear issue. At the same time, the two entities do not necessarily share a 'worldview' and their relationship has occasionally been confrontational.²²

The chapter argues that the Muslim faith has played a far from negligible role in the development of the Pakistani nuclear capability. First, the proliferation drivers of security and prestige, discussed in the introduction, are applicable on two levels in the Pakistani case: national and pan-Islamic. Indeed, the security considerations pushing the Pakistani leadership toward the bomb were not merely those of the nation but also of the wider *ummah*. Likewise, A.Q. Khan and Pakistani decision-makers were not only trying to find an element of pride for their new nation, but also for the entire Muslim world, thus putting it 'on a par' with the other major civilisations. Second, the faith was not only a national driver, but also a personal one for a number of key figures in the Pakistani nuclear weapons programme. This includes A.Q. Khan, who was inspired by his personal interests, including money and ego, as well as his faith, to proliferate weapons' materials, technology, and design to other Muslim states. Third, thanks to the Islamic component of its nuclear narrative, Islamabad legitimised its nuclear weapons programme in the Muslim world, gaining political and financial support from Muslim states.

This chapter discusses the results of the Pakistani Islamic nuclear discourse. It argues that, unlike Al-Qaeda and Iran's discourses, which hold their basis in the legal and ethical causes and consequences of the possession and/or use of nuclear weapons, Islamabad's has been void of any such discussion. Instead, the Pakistani leadership has made a pragmatic, security and prestige-driven decision, choosing to not interrogate Islamic jurisprudence on the question of the legality of the acquisition and use of

²¹ Tangachari, T.C.A. in Kalia, Ravi (2011), *Pakistan: From the Rhetoric of Democracy to the Rise of Militancy*. Milton Park: Routledge, 128

²² Grare, Frederic, in Kalia, Ravi (2011), 173

nuclear weapons. Nonetheless, by doing so, Islamabad has in effect taken a stance on the legal and ethical question. Its decision, not only to develop a nuclear weapons capability, but to justify it in Islamic terms, provides evidence of its belief that the possession and, perhaps, use of nuclear weapons are justified by the faith. Pakistanis may not believe the use of nuclear weapons to be allowed in Islam, but they believe the possession of these weapons and deterrence more generally to be allowed and even encouraged by the faith.²³ Deterrence and defence, even by using indiscriminate means and methods of warfare, are, then, viewed as allowed by Islam. It is important to note that Islamabad's ability to use Islam to gain political and financial support from Muslim countries shows that they do not believe nuclear weapons to be inherently prohibited by the faith.

The present chapter first provides an overview of the creation of the Pakistani state, highlighting the key role of the Muslim faith in establishing Pakistan and shaping Pakistani national identity. Building on this background, the following sections examine two key sets of issues. First, the role of Islam in motivating Pakistan's leadership to pursue nuclear weapons, convincing other Muslim states' leaders to support this endeavour financially and politically, and fashioning the Pakistani population's views of its nuclear weapons are discussed. Second, the role of A.Q. Khan's religious beliefs in inspiring the activities of his network is considered.

Pakistan: the nascent nation, a history

Pakistan is the archetypal product of colonialism, or more accurately, decolonisation. It was created 'artificially' to become home to a part of India's population, namely those adhering to the Muslim faith. Importantly, 'Pakistan was born an insecure state [...], and it remains so to date.'²⁴ However, the very creation of a Muslim state was controversial and many of the subcontinent's Muslims remained in India. Nevertheless, in the words of the Pakistani Constitution, the 'Islamic ideology' provides the 'basis for the creation' of the country.²⁵ Yet, as discussed further, the founders of the new Muslim state did not all intend for politics and religion to be intertwined. However, the complex process of nation-building led the country gradually to centre many of its projects on the

²³ INT002SNT

²⁴ Fair, Christine (2014), *Fighting to the End – The Pakistan Army's Way of War*. Oxford: Oxford University Press. P. 1

²⁵ 'Constitution of the Islamic Republic of Pakistan', 10-04-1974.

axis of Islam. This is particularly the case of areas relevant to the country's approach to foreign and nuclear policy. In fact, the idea of Islam as a determining component of Pakistani national identity defined the direction of its foreign policy, including its alliances. It further shaped the leadership's approach to its nuclear ambitions and decision-making. At the same time, Pakistan's nuclear ambitions were primarily aimed at addressing the nascent nation's security concerns, borne out of the country's rivalry with the former motherland, now seen as the archenemy.

Constitution

The Preamble to Pakistan's Constitution establishes the role of Islam in the public sphere: 'Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.' Article 2 of the Constitution establishes Islam as the official state religion, based on this, Article 31 guarantees the state will take steps to promote the 'Islamic way of life'. Most important, Article 40 provides a substantial element determining the country's foreign policy, that of Islamabad's relations with the rest of the Muslim world, which in turn plays a decisive role in the success of the Pakistani nuclear weapons programme. Article 40 provides that,

The State shall endeavour to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity, support the common interests of the peoples of Asia, Africa and Latin America, promote international peace and security, foster goodwill and friendly relations among all nations and encourage the settlement of international disputes by peaceful means.²⁶

Article 230 lays the functions of the Islamic Council, created to oversee the law-making process, to ensure their compatibility with Islam.

Make recommendations to [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether proposed law is or is not repugnant to the Injunctions of Islam;

²⁶ *Ibid.*

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect.²⁷

This Article is particularly interesting in the context of the debate surrounding the legality of nuclear weapons under *shari'a*. Indeed, had nuclear weapons been considered against the prescriptions of the faith in Pakistan, this Council would have stepped in, advising the president not to pursue them. Furthermore, the president and prime minister (as well as virtually all other Pakistani officials), in their respective oaths, provided by Articles 42 and 91 (3), swear they believe in 'all the requirements and teachings of the Holy Quran and Sunnah' and to 'strive to preserve the Islamic ideology which is the basis for the creation of Pakistan.'²⁸

The constitution of Pakistan sheds light on two key issues. First, as discussed previously, Pakistan was established as a Muslim state with Islam and its values at its heart. Second, the founding fathers of this new Muslim state strived to build a mechanism into the law-making process to provide for the development of new laws and to assure their compatibility with the Muslim faith. This has implications for the Islamic legal debate surrounding nuclear weapons: it shows that there was no opposition to the legality of said weapons under Islamic law from Pakistani religious scholars. Hence, this demonstrates that the prohibition of nuclear weapons by Islam is not clear and widely accepted across the Muslim world. As noted in Chapter Three, this stems from the lack of a consensus and unified stance on the legality of nuclear weapons in the Sunni world. Had this been the case, Islamabad's ability to use Islam as an enabler would have been challenged both at home and abroad.

The next section examines the history of Pakistan from its independence to the acquisition of the bomb.

The Hindu-Muslim divide

The roots of the Pakistani quest for the world's greatest deterrent and the view that the country should enhance its security can be found in the inception of the states of India and Pakistan. The India-Pakistan separation occurred following the end of the British colonial presence in the subcontinent. However, the threat perception and feeling of

²⁷ *Ibid.*

²⁸ *Ibid.*

insecurity among the subcontinent's Muslims holds its roots in the historical presence of these faiths in the region and the very foundations of their values. Indeed, the two religions scarcely have anything in common. On the one hand, upon Islam's advent in the subcontinent in the eleventh century, Hindu temples and sculptures were destroyed. These temples represented the very philosophy the Prophet had a divine mission to combat: idolatry. Hence, a parallel could be drawn between the specific Arabian tradition and belief that Muhammad was ordered by God to combat, and the Hindu, polytheist culture the Muslims were encountering in the Indian subcontinent. What is more, as Hindus are not considered as 'peoples of the Book', unlike Christians, Jews (and Zoroastrians in Iran), they did not receive the same protections as these groups. Additionally, as they did in other lands they conquered, Muslims undertook to convert the population to their faith. On the other hand, Hindus viewed Muslims as another caste, of which they tried to remain separate.²⁹ Therefore, the conflict was brewing for centuries between two ways of life and philosophies, fundamentally different from one another: 'Hinduism, which was tolerant of dissent and absorptive; and Islamic, which was militant, exclusive, and dogmatic'.³⁰ By the time India became colonised, it had become a deeply fragmented society, where 'two radically different ways of life competed for the allegiance of the population'.³¹ After decades of British presence in the subcontinent, the decolonisation process began in a society marked by cleavages. Mohammed Ali Jinnah, who led the Muslims to establish their own state to avoid prosecution, expressed these differences in the following words:

How can you even dream of Hindu-Moslem unity? Everything pulls us apart: We have no intermarriages. We have not the same calendar. The Moslems believe in a single God, and the Hindus are idolatrous. Like the Christians, the Moslems believe in an equalitarian society, whereas the Hindus maintain their iniquitous system of castes and leave heartlessly fifty million Untouchables to their tragic fate, at the bottom of the social ladder.³²

Yet, despite these differences and the deep disparity and mistrust between these two factions, there was no consensus around the idea of separation within the Muslim population of the subcontinent. In fact, 'before independence, there was a significant split among the influential *ulama* and the religious ideologues about the desirability of

²⁹ Stoessinger, John (2008), 179

³⁰ *Ibid.*

³¹ *Ibid.*, 180

³² *Ibid.*, 183

creating Pakistan.’³³ However, Jinnah successfully convinced those sceptical and rallied them around the new Muslim state’s flag. The Hindus for their part gathered around Mahatma Gandhi, who despite his prominence was unable to unite the two factions of the population. In fact, his role in shaping Indian nationalism was conducive to emphasising the difference between the Hindus and Muslims. Gandhi and his nationalist movement highlighted ‘mass participation, majority rule, and Indian (Hindu) tradition’, which in turn deepened the gap between Hindus and Muslims.³⁴ This led the Muslims to become apprehensive of the Hindus’ intent and concerned that the majority rule would serve to marginalise them. They believed that ‘Hindu revivalism would undermine their faith and dim their political future’.³⁵ For this reason, despite his enormous influence, Gandhi was unable to forge Indian nationalism into a cohesive whole. The Muslims always viewed the Congress with suspicion, fearing that with independence, they would be persecuted against.³⁶

The result of these irreconcilable differences was the 1947 creation of two new states in South Asia: India and Pakistan. Nevertheless, as noted in the previous section, Pakistani unity was not all comprehensive and Jinnah and the *ulamā* had divergent visions for their new state. While Jinnah and ‘the majority of the middle-class intelligentsia who formed the government acknowledged Islam as the fountain head of the new state, they had little interest in creating an Islamic state.’ This was in contrast to the position of the *ulamā*, who naturally envisioned their new state as an Islamic one. However, to make matters more complex, the *ulamā* could not reach an agreement among themselves on anything beyond the ‘centrality of the *Shariah* law and some form of hierarchical separation of non-Muslims from Muslims’.³⁷ This conflict between the two factions gave birth to the Pakistani Constitution, which as noted above, established an Islamic Republic, governed by laws created in accordance with ‘the Quran and the *Sunnah*’. Nevertheless, ‘no mention was made of the term *Shariah*’. Hence, ‘the result was a reasonably balanced compromise.’³⁸

³³ Avari, Burjor (2013), *Islamic Civilization in South Asia – A history of Muslim power and presence in the Indian subcontinent*. London: Routledge. P. 237

³⁴ Stoessinger, John (2008), 182

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Avari, Bujor (2013), 237

³⁸ *Ibid.*, 238

The India-Pakistan nexus

Following the addition of India and Pakistan to the community of nations, Muslims and Hindus began a process of mass exile, respectively from east to west and vice versa. Among those who made the trip to the newly founded Muslim state, were the parents of A.Q. Khan. The experience marked Khan, who ‘could never utter the words “Hindu” or “Hindi” without embellishing them with a curse’.³⁹ This deep mistrust of Hindus and India shaped Khan and many Pakistanis’ threat perception, leading to their pursuit of a nuclear capability for their new country. The dispute over Kashmir made this already complicated picture even more complex. It led the two countries to engage in armed conflict a number of times and continues to have a great impact on their relations. The First Kashmir War erupted in 1947 with neither India nor Pakistan being able to secure a ‘decisive military victory’. India brought the case before the Security Council in 1948, arguing that Pakistan had waged a war of aggression against it. Islamabad in turn denounced India’s illegal occupation and accused it of genocide in Kashmir.⁴⁰ The Security Council imposed an immediate ceasefire, which went into effect in 1949 only for the conflict to resume in 1965 and again in 1999. During the 1950s, Pakistan began to militarise, while striving to build alliances with the west. In the following decade, utilising the opportunity provided by a Sino-Indian territorial dispute, Islamabad formed an alliance with Beijing. ‘By the mid-1960s Pakistan was in the unique position of being a member of two Western military alliances and at the same time enjoying the friendship of the People’s Republic of China.’⁴¹ The war came to an end thanks to Soviet intervention but was far from settled. To make matters even more complicated, an internal Pakistani conflict was added to the equation six years later, when a civil war erupted in the Bengal.

East and West Pakistan scarcely shared anything aside from the Muslim faith. While the East, was overpopulated and underprivileged, the western territories were only inhabited by forty-percent of the Pakistani population, home to two-thirds of the country’s ruling class, and received most of the aid and resources received from the country’s western allies.⁴² These matters, along with a devastating cyclone and the postponement of the free-elections promised by President Yahya Khan, further

³⁹ Venter, Al (2007), 54

⁴⁰ Stoessinger, John (2008), 185-6

⁴¹ *Ibid.*, 187-89

⁴² *Ibid.*, 191

aggravated the situation. To make matters worse, the elections favoured Bengali leader, Sheik Mujibur Rahaman, rather than Zulfikar Ali Bhutto, for the position of prime minister. The leader of the Pakistani People's Party (PPP), Bhutto was a highly charismatic, eloquent, and profoundly ambitious man.⁴³ 'In his own eyes, Prime Minister Bhutto was a man of destiny, the heir of the Mogul emperors [...] He was the chosen leader of his people, with unbounded ambition to put himself and his wretched and impoverished nation at the top of the entire Third World.'⁴⁴ The West, fearing a Bengali majority in the National Assembly, and the East, striving for it, entered a civil conflict. Bhutto stood by the army, and secured his position as prime minister of the country thanks to the majority vote of Western Pakistanis, but also to the trust of the military.⁴⁵ To be sure, during the conflict, 'the military used Islamist groups to keep secular leaders elected by the Bengali population out of power.' This trend continued after the East Pakistan War of secession and accelerated after the civil war in Balochistan (1973-77), where 'Islamist groups, both armed and unarmed, were systematically rewarded in order to create national cohesion through religion.'⁴⁶ The conflict had a devastating outcome for Pakistan, as indiscriminate rape, mutilation, and the massacre of Bengalis led eight million people to flee to India and the Hindu state was requested to step in.⁴⁷

The picture became complete when India, 'eager to cripple'⁴⁸ its rival, began to support the Bengali aim for secession under the leadership of Indira Gandhi. 'As the conflict intensified in early December, the elements of a fierce religious war made their appearance. Gradually all restraint was lost, and the religious basis of the struggle was revealed in all its fanaticism and ferocity.'⁴⁹ The rhetoric around the conflict was no longer one of territorial unity and integrity, but rather one of sheer faith, mirroring the discourse of the Prophet, depicting himself as the monotheist opposing the idolaters and their wrong path. This was a *jihad* against the Hindu idolaters. This religious element became the centrepiece of the Pakistani nuclear issue and the conflict became the real trigger for Pakistani nuclearisation. The war ended with a devastating Pakistani defeat, giving birth to yet a new state: Bangladesh. Bhutto 'spoke of Pakistan's defeat and

⁴³ Weissman, Steve, Krosney, Herbert (1981), 40

⁴⁴ *Ibid.*, 41

⁴⁵ *Ibid.*, 42

⁴⁶ Grare, Frederic, in Kalia, Ravi (2011), 168

⁴⁷ Weissman, Steve, Krosney, Herbert (1981), 39

⁴⁸ *Ibid.*, 40

⁴⁹ Stoessinger, John (2008), 199

humiliation in the war with India, and vowed that he would vindicate the country's honor.⁵⁰ Today, Pakistan continues to view 'its eastern neighbour, India, as an eternal foe that not only seeks to dominate Pakistan but also to destroy it if and when the opportunity arises.'⁵¹

Shaping a Muslim state and the quest for the bomb

Following the secession of Bangladesh, India joined a select group of nations to have a nuclear deterrent when it successfully conducted a nuclear test in 1974, three years after the bitter Pakistani defeat. Islamabad was not far behind its rival, as former Pakistani President and Prime Minister Zulfikar Ali Bhutto, determined to develop a nuclear capability for Pakistan, had decided to follow course in his first few days in office.⁵² He embarked on the project to put Pakistan on a par with India but also, to close the nuclear gap between the Islamic and Hindu, Jewish, and Christian civilisations. To him the quest for the bomb was so crucial that when 'asked what Pakistan's response would be if India were to "go nuclear", [h]e responded, "Then we should have to eat grass and get one, or buy one, of our own."'⁵³

To secure funding for his project, Bhutto 'embarked on a whirlwind tour of twenty countries, mostly in the Middle East [...] Bhutto's former press secretary, Khalid Hasan who travelled with him called the trip the president's Islamic offensive'.⁵⁴ Bhutto's presentation of a plan for a Muslim bomb was met with positive responses from across the Muslim world. Iran, Libya, and Saudi Arabia all financially contributed to Islamabad's project.⁵⁵ This was especially the case of Arab leaders, who viewed the Pakistani bomb as an easier solution to their security needs than developing a nuclear capability of their own. Their calculations were that, 'the world and particularly Israel, would not tolerate a nuclear weapons program in the volatile, oil-rich region' of the Middle East. In contrast, Pakistan's programme 'stood a better chance of avoiding international interference because its bomb might be seen as a counter to India's

⁵⁰ Weissman, Steve. Krosney, Herbert (1981), 44

⁵¹ Fair, Christine (2014), 1

⁵² Weissman, Steve. Krosney, Herbert (1981), 42

⁵³ Bailey, Katherine (1991), *Doomsday Weapons in the Hands of Many: The Arms Control Challenges of the '90's*. Urbana: University of Illinois Press. P. 23

⁵⁴ Franz, Douglas. Collins, Catherine (2007), *The Nuclear Jihadist*. New York: Twelve. P. 21

⁵⁵ INT002SNT

superior forces and its rumored nuclear program.⁵⁶ In 1974, against the backdrop of the oil crisis, having ‘sent prices through the roof’, Bhutto ‘planned to cash in on his allies’ bonanza under the guise of an Islamic summit’. The idea was to ‘[use] the forum to lay out a broad vision of a new Muslim alliance that would join poor Islamic countries with their wealthy brothers to fight the Zionists and their Western backers.’ He saw a new role, that of a leader of the Muslim world, for a nuclear-armed Pakistan.⁵⁷

Hassan, described Bhutto’s ambitions as follows: ‘He wanted the bomb [...] because he wanted Pakistan to walk tall’; to be sure, ‘he knew that proliferation will come, and that more countries will become nuclear, and that there’s nothing that can stop it. So, if everybody’s going to have a bomb in the basement, he said, ‘Okay, if we have the capability, let’s do it.’⁵⁸ This endeavour was as popular in Pakistan as it was in India and seen as an element of ‘national pride’.

Today, nuclear weapons, as an element of national pride, continue to shape the Pakistani approach not only to security culture and national identity. In Feroz Khan’s words: ‘Pakistan has procured, built, secured, and managed one of the most advanced technologies in the world and has good reason to be proud of its capability. There is almost no other comparable achievement in the country’s history.’⁵⁹ As discussed in the following sections, the Pakistani general public feels the same way about what it perceives as the greatest achievement in the country’s history. Given the short history of Pakistan as a nation-state, one that has been marked by various security challenges, and both national and international, this view of nuclear weapons as an element of national pride is crucial. Therein lies another key difference between Pakistan and neighbouring Iran, a nation that – as discussed in the next chapter – prides itself in its historical, cultural, literary, and scientific contributions. Hence, Tehran’s nuclear programme is a component of its greater scientific ambitions, rather than its only such endeavour. Likewise, by contrast, the Iranian approach has been one of nuclear hedging.

In Pakistan, ‘the nuclear factor is so deeply embedded in national security thinking that any step toward disarmament would be met with stiff resistance.’⁶⁰ This idea is reinforced by the fact that nuclear weapons are not only perceived as a security tool for

⁵⁶ Franz, Douglas. Collins, Catherine (2007), 21

⁵⁷ *Ibid.*

⁵⁸ Weissman, Steve. Krosney, Herbert (1981), 49

⁵⁹ Khan, Feroz (2013), 377

⁶⁰ *Ibid.*

Pakistanis, but have also become a source of pride and, perhaps, even a pillar of their national identity. As discussed in Chapter Two and the introduction to this chapter, this opposition to stripping Pakistan of its nuclear arsenal or limiting its ability to further expand it has already manifested itself in Islamabad's attitude toward the FMCT.⁶¹ Indeed, 'the people of Pakistan have paid a heavy price, and many of their economic woes are the consequence of national security decisions taken since 1972.'⁶² These sacrifices have been inspired by the leadership's security and Islamic discourses. This idea perfectly illustrates the Pakistani view of national identity and its creation and existence in opposition to an equal or perhaps superior Hindu state.

Acquisition of the bomb

Pakistan conducted its first nuclear test in 1998, an event that some argue 'showed that for a part of the world, nuclear weapons, which had contributed so much to defining the Cold War, were a weapon of the future, not merely a relic of the past.'⁶³ Yet, the country had 'reached the testing threshold' in 1984.⁶⁴ Indeed, a decade prior to that, in 1974, Bhutto had 'publically pledged that Pakistan would go ahead with its own nuclear programme but as far as tests were concerned he stressed that Pakistan would not seek to explode a device.' However, the country's 'limited technological capabilities' led U.S. intelligence experts to believe that this 'was largely an expression of psychological bravado to bolster morale.'⁶⁵ As the Pakistani nuclear ambitions progressed, the United States, under the Reagan administration, concluded a bilateral agreement with Islamabad. This 1981 agreement 'served as the foundation for the revival of the American-Pakistani alliance in years to come.' The agreement had two components: Funding and training the mujahidin in Afghanistan against the Soviets (discussed in the previous chapter), and the nuclear issue. On the latter, given the U.S.-Pakistani

⁶¹ Pakistan perceives the FMCT as potentially limiting, as it would establish boundaries to its further developing its nuclear capability, leaving India with an advantage. 'India's stockpile of fissile materials is estimated to include 2.4±0.9 tonnes of HEU (0.8±0.3 tonnes of 90% HEU equivalent), 0.54±0.18 tonnes of weapon-grade plutonium, and 4.9±0.4 tonnes of reactor-grade plutonium, that includes 4.7±0.4 of material considered strategic reserve and 0.24 tonnes of safeguarded plutonium.' On contrast, 'as of the end of 2012, Pakistan had an accumulated stockpile estimated at about 0.15±0.05 tonnes of plutonium [...] about 3±1.2 tonnes of HEU.'

Pakistan, International Panel on Fissile Materials, 3-02-2013.

⁶² Khan, Feroz (2013), 388

⁶³ Delpech, Thérèse (2007), 179

⁶⁴ Rabinowitz, Or (2014), *Bargaining on Nuclear Tests – Washington and its Cold War Deals*. Oxford: Oxford University Press. P. 137

⁶⁵ *Ibid.* 139

partnership in Afghanistan, Washington would allow Islamabad to proceed with its nuclear programme, turning 'a blind eye' to it. This meant that Pakistan was able to continue working on its programme without testing, as this would 'publically [embarrass] the Reagan administration.'⁶⁶

Today, nuclear weapons play a key role in Pakistan's military strategy. Islamabad's nuclear weapons programme was established to overcome its conventional inferiority against India and continues to fill that void. While some nuclear states have come to rely less on tactical nuclear weapons since the end of the Cold War, Pakistan still views them as a key component of its military and nuclear strategy. As of 2013, the Pakistani nuclear arsenal was estimated to comprise a stockpile of between 90 and 110 (some studies estimate it at 120) nuclear warheads.⁶⁷

Pakistan's 'first accomplishment was on 6 April 1978 when full enrichment was accomplished. Ninety-percent weapon grade enrichment was in 1982. Core test started later in 1983 [without using fusion material in the exploding centre].'⁶⁸

The Khushab Complex is one of Pakistan's key facilities, providing the country's weapons-grade plutonium. Khushab is located in Punjab and is composed of three operational reactors and one reactor under construction, as well as a heavy water plant (as of January 2014). The construction of the Khushab 1, a 40-50 Megawatt (MW) reactor, began in 1987 and went online a year later. It was followed by the construction of the two 50MW plutonium production reactors. All three reactors are moderated by heavy water. A fourth reactor would allow the country to produce 24-48 kg of weapons-grade plutonium each year,⁶⁹ 'doubl[ing] its output of nuclear weapons.'⁷⁰

Established in 1975, the Kahuta Research Laboratories (KRL - also known as the Khan Research Laboratories) are Pakistan's main uranium enrichment facility, located in Punjab. The facility has played a key role in the country's nuclear weapons programme and has been home to the country's advanced centrifuges, including P-3 and P-4 centrifuges, introduced throughout the 1980s and 90s. As of 2010, the facility was believed to have produced 2.7 tonnes of HEU. The facility has become a source of

⁶⁶ *Ibid.* 146

⁶⁷ 'Nuclear Weapons: Who Has What at a Glance', Arms Control Association. November 2013.

⁶⁸ Kamran Shahid interview with A.Q Khan. Front Line, Express News. 28-05-2012.

⁶⁹ 'Khushab Complex', The Nuclear Threat Initiative.

⁷⁰ 'Pakistan Doubling Rate of Making Nuclear Weapons: Time for Pakistan to Reverse Course', Institute for Science and International Security. 16-05-2011.

concern following a suicide attack against a bus transporting its workers, which occurred in 2009.⁷¹

Another key site in Pakistan's nuclear sector lies in the Wah Cantonment Ordnance Complex. The facility, which produces conventional weapons, is also where the country's main nuclear weapons assembly takes place. The site is also notable due to it being the target of suicide attacks in 2008.⁷²

Neither KRL nor Khushab are under IAEA safeguards and inspections. What is more, given the track record of terrorist attacks against the country's nuclear facilities mentioned above, these sites are a source of concern from a nuclear security perspective. This is especially the case given that Pakistan, along with neighbouring Afghanistan and Iraq, was home to more than half (fifty four-percent) of all terrorist attacks in 2012.⁷³ In addition to the proliferation and nuclear security threats represented by Pakistan's nuclear weapons programme and arsenal, the country also continues to engage in the illicit trade and procurement of nuclear technology.⁷⁴

The following sections discuss the role played by national and religious identities in the development of the nuclear weapons programme. They further assess the role of the Islamic discourse in shaping the country's nuclear narrative and examine its impact on illicit trade and proliferation.

The programme and Islamic discourse

As discussed in the introduction, the proliferation drivers model is a useful tool in framing Pakistan's decision to nuclearise. The 'security model' can only be partially applicable to the case of Pakistan. The model follows the typical 'defence realist' point of view that states 'develop nuclear weapons when they face a significant [external] military threat to their security that cannot be met through alternative means'. In this sense, 'most decisions to develop nuclear weapons "appear to be best explained by the security model."' ⁷⁵ The national security model, based on the Hobbesian view of international relations, holds that due to the international system's anarchic nature,

⁷¹ 'Kahuta Research Laboratories', The Nuclear Threat Initiative.

⁷² 'Wah Cantonment Ordnance Complex', The Nuclear Threat Initiative.

⁷³ 'Despite Fewer Attacks in Western World, Global Terrorism Increases', National Consortium for the Study of Terrorism and Responses to Terrorism (START) Global Terrorism Database. 19-12-2013.

⁷⁴ 'Pakistan Doubling Rate of Making Nuclear Weapons: Time for Pakistan to Reverse Course', Institute for Science and International Security. 16-05-2011.

⁷⁵ Sagan, Scott (1996-97), 85

states will do whatever they see as necessary in order to guarantee their security.⁷⁶ This view is one shared by the Pakistani leadership, which, sceptical of foreign intervention in case of an armed conflict with India, was of the belief that it must do everything in its power to ensure the safety and security of the Muslim state. According to this view, when threatened, a state must match its rival's nuclear arsenal or risk its very existence. This view, providing a basis for an arms race, holds that 'proliferation begets proliferation'. As noted by Scott Sagan, 'Every time one state develops nuclear weapons to balance against its main rival, it also creates a nuclear threat to another region, which then has to initiate its own nuclear weapons program to maintain its national security'.⁷⁷ Christine Fair warns, however, that the argument shaped around the security element should not be overstated, as has been the case in 'the current and past US policy approaches to Pakistan.' These policies have 'assumed that Pakistan is a state that is motivated largely by security concerns that can be satisfied with some territorial concession and thus capable of abandoning its revisionism with the appropriate allurements.' Fair argues that if Pakistan is indeed a 'purely greedy state, driven by ideological motives, then appeasement is in fact the more dangerous course of policy prescription. She attributes Islamabad's revisionism to its willingness 'to increase its prestige or spread its political ideology or religion, even when doing so is not strictly speaking needed to preserve the state's security or, worse, when doing so puts at risk the integrity or even viability of the state'.⁷⁸

Pakistan, certainly, pledged to match its rival's arsenal, not only to ensure its survival, but also in order to ensure its Hindu neighbour's prestige would be matched by the Muslim world. Yet, as mentioned previously, this view alone cannot explain Pakistan's nuclear endeavours. In this sense, two other models must be considered.⁷⁹

According to the domestic politics model, proliferation should be viewed as a political payoff to powerful domestic electoral or bureaucratic constituencies. This approach sees states as units made up of competing internal factions, within which influential bureaucratic and military actors can lead a state to nuclear weapons. This view also identifies three sets of dominant roles in nuclear decision-making: scientists, soldiers, and policymakers, of which the last group are the most important as they have the final

⁷⁶ Cirincione, Joseph (2008), *The Bomb Scare: The History and Future of Nuclear Weapons*. New York: Columbia University Press. P. 53

⁷⁷ Sagan, Scott. (1996/97), 70

⁷⁸ Fair, Christine (2014), 282

⁷⁹ Cirincione, Joseph (2008), 64-66

say on such matters.⁸⁰ This has been particularly true in the case of Pakistan, as discussed further in the following sections. Second is the norms model, in which proliferation is viewed as the product of a state's quest for acceptance as a legitimate modern member of international society.⁸¹ The prestige model emphasises the symbolic value of the ultimate weapon and their view as a prerequisite for 'great power status.' This view has been key in the Pakistani quest for nuclear weapons and become increasingly important in light of the sacrifices the population has had to make to achieve its goal. The country had a perception of what makes a state modern, legitimate, and strong, based on the Indian example, which it was trying to match in power and prestige.⁸² The two models of technological determinism and the economic approach do not play as key roles in the case of Pakistan as the three former. Furthermore, for the case of Pakistan the following statement holds particularly true: "the driving forces of future proliferation" will include not only security and prestige considerations but also a "proliferation momentum". It was thus assumed that at some future point nuclear proliferation "may become a self-reinforcing process."⁸³

Legitimising and financing nuclear weapons

A.Q. Khan's journey from Bhopal to the Netherlands and his work, involving classified material in the Ultra-Centrifuge Nederland (UCN) enrichment facility is well known. So is the effect of the 18 May 1974 nuclear test (Smiling Buddha) conducted by India both on him and his subsequent letter to Bhutto.⁸⁴ As noted previously, Khan's view of India was key in his decision to become involved in the Pakistani nuclear weapons programme. At the time of the Smiling Buddha test,⁸⁵ Islamabad had already embarked on a nuclear weapons programme of its own and welcomed Khan's interest.⁸⁶ By 1969, Bhutto had made the decision to prioritise security and territorial integrity over economic development: 'although such development and self-reliance contribute to the strengthening of the nation's defence capability, the defence requirements of her

⁸⁰ *Ibid.*

⁸¹ Sagan, Scott (1996-97), 54-86

⁸² Cirincione, Joseph (2008), 51

⁸³ Dunn, Lewis; Overholt, William. "The Next Phase in Nuclear Proliferation Research" in *Orbis* 20, no 2 (summer 1976: 515)

⁸⁴ Venter, Al (2007), 55

⁸⁵ Codename given to India's first nuclear test, conducted 18 May 1974 (also known as Pokhran-I). Smiling Buddha was the first nuclear test conducted by a non-NPT NWS.

⁸⁶ *Ibid.*

sovereignty have to be met first.’ He stressed that ‘a non-industrialized country, without even the basis of a heavy industry, cannot depend entirely on the traditional defence system of a small, though highly efficient, armed force equipped with conventional weapons.’⁸⁷ The Dutch, however, did not welcome his newfound interest in nuclear projects and classified information. In December 1975, Khan left Holland with ‘a batch of classified Urenco blueprints, together with lists of European suppliers, many of whom he would be contacting in the years to come.’⁸⁸ Upon his return to Pakistan, Khan began to work on ‘centrifuge-related projects within the confines of the Pakistan Atomic Energy Commission (PAEC)’, before being given ‘autonomy and control over Pakistani uranium-enrichment programs from July 1976 onwards.’⁸⁹ As Khan and his colleagues made progress toward the establishment of the Pakistani nuclear weapons programme, the west, dubious of the activities, began to set obstacles on their way. By 1979, the United States had made a decision to cut Islamabad off from its financial and military support. This disruption was, however, only for a brief period, as, with the Soviet Union now in Afghanistan, Washington could not afford to lose Pakistan’s support. By the early 1980s, Khan had ‘managed to acquire the plans for Beijing’s first atom bomb, which was tested fifteen years before at Lop Nor. The event made the man, and Khan was showered with plaudits. From then on, there would be no looking back.’⁹⁰

11 May 1998 marked the detonation of five nuclear devices by India. A.Q. Khan interpreted the tests as a direct message to Pakistan, omitting any mention of India’s threat perception shaped by China.

India’s new government was more fundamentalist, they wanted to prove their superpower status. They wanted to show the world that they were a ‘big’ country too and wanted to be in the ‘superpower’ category.

Also, they thought Pakistan was bluffing [about having the bomb]. And wanted to teach Pakistan a lesson – tell us to walk with our heads down. When it was our turn, we showed our own demonstration in response.⁹¹

Less than three weeks after New Delhi’s tests, Pakistan’s response was formulated in the form of its first six nuclear tests, marking the country’s official entry into the

⁸⁷ Bhutto, Zulfikar Ali (1969), *The Myth of Independence*. London: Oxford University Press. P. 152

⁸⁸ Venter, Al (2007), 56

⁸⁹ *Ibid.*, 56

⁹⁰ *Ibid.*

⁹¹ Kamran Shahid interview with A.Q Khan.

‘nuclear club’.⁹² However, Islamabad had crossed that line earlier and had developed a nuclear capability. In his response to the question ‘when was the real date at which Pakistan had the bomb’, A.Q. Khan replied:

84 – We gained the ability to release a bomb within one week. Zia ul-Haq was very happy. But government and military focus was on Afghanistan at the time; they made the decision that if they released the information that we are a nuclear power, while in the middle of a war as we also receive U.S. aid to fight the rebels the United States would not be happy.⁹³

Pakistan had started working toward a nuclear capability decades prior, however. To this end, the Pakistan Atomic Energy Commission (PAEC) was founded in 1956, but ‘it was for many years a ramshackle operation. In contrast, by 1959, the Atomic Energy Commission of India in Trombay had over 1,000 scientists working on civilian nuclear technology.’⁹⁴ India’s nuclear policy changed with the Sino-Indian war of 1962 and the Chinese 1964 nuclear test. ‘Given that India’s scientists were speaking privately about the need to develop a nuclear bomb while its leaders publicly sought a civilian nuclear capacity, it is not improbably that rumors of these discussions reached the Pakistan military or the intelligence agencies.’⁹⁵

Nevertheless, by the 1990s, when Pakistan was in a position to conduct nuclear tests, Nawaz Sharif was reluctant to do so, as he did not want to ‘upset’ the United States. In A.Q. Khan’s words: ‘Due to sanctions. He was scared about aid cut-off. The finance minister scared him about funds that would be cut-off [if we displeased the Americans and by extension the west].’ Khan sent Sharif a letter, urging him to act to avoid Pakistan going ‘down in history as a fearful coward.’ Saudi Arabia’s petrodollars came to Islamabad’s rescue, as Pakistan was hit by sanctions. The Saudi role in financing Pakistan’s nuclear ambitions provides grounds for many to expect Islamabad to provide Riyadh with a ‘sort of nuclear umbrella’, should Iran develop nuclear weapons.⁹⁶ This scenario also entails a potential ‘secret agreement on “nuclear cooperation”’ which would establish an exchange of nuclear technology for oil. Al Venter suggests that such an agreement may already have been reached.⁹⁷ Indeed, ‘both Pakistan and Saudi

⁹² Venter, Al (2007), 58

⁹³ *Ibid.*

⁹⁴ Fair, Christine (2014), 229

⁹⁵ *Ibid.*

⁹⁶ Venter, Al (2007), 150

⁹⁷ *Ibid.*, 151

Arabia see a world that is moving from nonproliferation to proliferation of nuclear weapons.’⁹⁸

The Pakistani leadership’s decision to nuclearise was mainly security-driven, at first, and aimed to address a particular security concern, the Indian threat. In fact, Pakistan’s bomb is ‘an India-specific bomb’, and Pakistani deterrence ‘is a carefully crafted notion, only [against] India.’⁹⁹ But, as Pakistan invested in the bomb, often at the expense of other economic, scientific, technical, cultural, and educational endeavours, the bomb became an element of national pride, in addition to its being a deterrent. Islam was both a driver for some of the key figures in Pakistan’s nuclear programme (including both Bhutto and A.Q. Khan), but also a tool to galvanise support and seek funding from the Muslim world. Therefore, traditional international relations models, which seek to theorise and explain nuclearisation, fall short of explaining the Pakistani endeavours.

As discussed earlier in the chapter, the Pakistani self-image is highly fashioned around Islam. The Pakistani nation was created based on one major element of distinction from the rest of the subcontinent: the Muslim faith. This self-image has determined the country’s attitude toward nuclearisation and continues to play an important role in the way the country sees the non-proliferation regime. Two factors shape this view. First, the Pakistani nation self-identifies as a part of the *ummah*. Hence, unlike Iran, it is key for the Pakistani government to justify its actions, including in the nuclear field, as in accordance with the will of God, as reflected by His Messenger. Second, the country’s religious identity plays a key role in the country’s view of its own status in the Muslim world and beyond, as well as its relations with the rest of the *ummah*, and ultimately, its foreign policy. The previous sections examined the role of the Muslim faith in fashioning the views of key figures in Islamabad’s nuclear programme, as well as its broader implications for nuclear policy in Pakistan. The following sections examine how the Islamic faith has shaped Islamabad’s nuclear narrative.

At home

⁹⁸ *Ibid.*

⁹⁹ INT002SNT

In Pakistan, 'various Islamic traditions have been used to construct a distinct identity to counter the hegemonic Islamic modernism of the state', which Oskar Verkaaik refers to as the 'ethnincization of Islam.' This, he argues, 'shows that religious nationalism in Pakistan has been relatively successful as even dissent is expressed in Islamic terms.'¹⁰⁰ In fact, as discussed by Gilles Boquérat and Nazir Hussain, in an opinion poll conducted in 2006-2007, where 'the respondents ranged from 18 to 25', with a large majority of students at Bachelors' level, only thirteen-percent of them 'considered that the influence of religious considerations should not be very significant in the determination of state policies.' Moreover, 'when asked about the reasons explaining the attraction of some Muslims for extremism, unsurprisingly it was first of all seen as a reaction against Western policies in the Muslim world.'¹⁰¹

The Pakistani population seems more attached to its religious identity and Muslim values than many other Muslim societies. As suggested by a study conducted by the Pew Research Center in 2006, the majority of Pakistanis (eighty seven-percent of the country's population, as of 2006) identify themselves as Muslims first, and Pakistani nationals second. It is worth noting that this number expanded from seventy nine-percent to eighty seven-percent in one year.¹⁰² Hence, developing an Islamic dimension to foreign and nuclear policy is key to galvanising support in Pakistan. This distinguishes Pakistan from neighbouring Iran, where, as discussed in Chapter Six, there is a more complicated relationship to religion and national identity, less intertwined with the Muslim faith. In fact, in the case of Pakistan, Islam was the determining factor behind the nation-state's creation. In the Iranian case, Shiite Islam was a tool or means to preserve the nation's cultural and political independence rather than the end. Therefore, while much of Iran's Islamic nuclear discourse is produced for foreign consumption, in the case of Pakistan, the discourse is as important at home as it is abroad.

Likewise, opinion polls in Pakistan suggest that the population overwhelmingly supports the country's nuclear capability and views it positively. According to Gallup Pakistan, for instance, eighty seven-percent of the Pakistani population supported

¹⁰⁰ Verkaaik, Oskar, in Kalia, Ravi (2011), *Pakistan: From the Rhetoric of Democracy to the Rise of Militancy*. Milton Park: Routledge. P. 53

¹⁰¹ Boquérat, Gilles, and Hussain, Nazir, in Kalia, Ravi (2011), 185-186

¹⁰² The Pew Global Project Attitudes, 'Few Signs of Backlash from Western Europeans - Muslims in Europe: Economic Worries Top Concerns about Religious and Cultural Identity', 06-07-2006.

nuclearisation in 1987.¹⁰³ In 2009, despite a decline in national pride among Pakistanis (falling from ninety five-percent in 1985 to seventy nine-percent in 2009), the development of a nuclear capability was identified as the country's 'greatest achievement since its creation'.¹⁰⁴ This sense of 'achievement' becomes incredibly important when one compares Pakistan to its archenemy. Indeed, 'in a country that has made only modest gains in the areas of innovation, science, and education (especially in comparison with its rival, India), the Pakistani nuclear program has played an outsized role in the building of national self-esteem.' Therefore, 'critiques [...] are deeply wounding. They produce feelings of distrust.'¹⁰⁵ The lack of correlation between the decline in national pride and the country's nuclear weapons being consistently viewed positively is especially interesting in light of their relation to the economy. Indeed, there is a contradiction between the positive views of the country's growing nuclear arsenal, despite it being responsible for much of the country's poor economy,¹⁰⁶ and 'the decline in national pride amongst Pakistanis over the years is a product of political, social and economic upheavals in the past few decades.'¹⁰⁷ The population does not seem to equate the country's economic troubles with the nuclear weapons programme. This is despite 'nearly a quarter of the government budget go[ing] to the military', while 'some 60 percent of Pakistanis survive on less than \$2 a day.'¹⁰⁸ Hence, despite a general decline in the nationalist sentiment, the country's nuclear capability continues to hold a place of esteem in the population's views. A.Q. Khan, as the 'father' of the Pakistani bomb and perhaps the person viewed as the main contributor to national security, is also held in high esteem in the views of Pakistanis, many of who view him as a national 'hero'. Khan himself underlines this fact: 'What I have accomplished – I have given the people calm and peace and sense of security; that is no less of a blessing. Our nation can sleep soundly knowing now that there is no fear that Hindus can come over and invade us.'¹⁰⁹

Pakistan's relationship to its nuclear weapons programme and arsenal, as well as the deep connection between this capability and the faith, which shapes the views of the

¹⁰³ 'Gallup Pakistan Poll Findings on Strong Support for Nuclear Capability', Gallup Pakistan. 25-01-1986.

¹⁰⁴ 'Majority Feel Proud of Pakistan; Nuclear Capability and Improvement in Education are Top Achievements in Past Six Decades: Gilani Poll/Gallup.' 13-08-2009.

¹⁰⁵ Goldberg, Jeffrey and Ambinder, Marc. 'Nuclear Negligence'. *National Journal*. 4-11-2011.

¹⁰⁶ Khan (2013), 388

¹⁰⁷ 'Majority Feel Proud of Pakistan; Nuclear Capability and Improvement in Education are Top Achievements in Past Six Decades: Gilani Poll/Gallup.' 13-08-2009.

¹⁰⁸ Goldberg, Jeffrey and Ambinder, Marc. (2011)

¹⁰⁹ Kamran Shahid interview with A.Q Khan.

majority of the country's population, is problematic. Indeed, criticism of the nuclear weapons programme, or the arsenal and facilities' safety and security, is met with distrust. What is more, Pakistani fears of an American intervention to denuclearise the country also revolve around the country's Muslim identity and the notion of an inherent western and American opposition to Islam and Muslims. These views reflect those of A.Q. Khan and the notion of an on-going crusade against Islam. As discussed in the next chapter, similar views have been expressed by the Iranian leadership and other non-aligned states, which argue that the west does not want Muslim and developing states to reach the same technological status, especially in areas relating to defence. However, these views are more widespread in Pakistan, where the majority of the population considers the United States to be an enemy (seventy four-percent, in 2012, ten-percent increase since 2009).¹¹⁰

As discussed previously, the debate around the nuclear weapons programme in Pakistan has been shaped by the Islamic discourse, without engaging in ethical and legal debates. However, the fact that the Pakistani population, which identifies itself as a predominantly Muslim one, has not only accepted the development of a nuclear weapons capability, but also takes pride in it, shows that it does not believe these weapons to be illegal under its faith. As the next section demonstrates, the general support, both political and financial, received by Pakistan from the rest of the Muslim world, also indicates that other Muslim populations and leaders endorse the view that Islam does not prohibit the development and, potential use of nuclear weapons. As noted by Feroz Khan, 'a nuclear weapon capability is [not] prohibited [by the faith]. Islam encourages Muslims to "prepare against their enemies". That is deterrence. Deterrence is a fundamental concept of war. Islam tells Muslims to show off strength.' In his analysis, Khan relies on the Qur'anic verses provided and discussed in Chapter Three. Nevertheless, he explains that in Pakistan, like in Iran, 'Islamic scholars believe that the use of nuclear weapons is not actually allowed in Islam. You cannot kill anybody who is innocent. You cannot kill innocents. The problem with nuclear weapons is that they kill innocents.' Hence, 'if you strictly interpret Islamic law, nuclear weapons are not allowed unless you use very precision targeting, then, yes, they are allowed.' In response to how deterrence would be effective without the legality of the use, Khan argues: 'this is why it's not a theological bomb, but instrument of state. But

¹¹⁰ Pew Research Center, Global Attitudes Project. 'Pakistani Public Opinion Ever More Critical of U.S.'. 27-06-2012.

[...] deterrence is not credible unless usable.’ Nevertheless, ‘public discourse, the rhetoric of Islam, helps in domestic politics, but it is not what the real policy is.’¹¹¹

Abroad

As discussed in the previous sections, Pakistan was established as a Muslim nation and state. Its independence marked not only the establishment of a new nation and state, but also a departure from the people and culture it had been part of for centuries. This departure also meant that Pakistan would associate itself with the rest of the *ummah*, in particular Middle Eastern Arab states, but also Turkey and Iran. Pakistan’s relationship with the Arab states was an important factor for the newly established state. Yet, once independent, Pakistan chose a different approach to foreign policy from India. While India chose the non-aligned path to establish itself outside the communist and western blocks, the new Muslim nation ‘clung firmly to the West.’ It ‘proudly called itself the “most allied ally” of the United States’, signing a Mutual Defense Pact in 1954, followed by a Mutual Security Pact in 1959.¹¹² Field Marshal Ayub Khan supported this position and helped secure security guarantees from the United States, when he claimed before Congress that ‘if there is real trouble, there is no other country in Asia on whom you will be able to count. The only people who will stand by you are the people of Pakistan.’¹¹³ Ayub Khan’s beliefs that Islamabad’s alliance with Washington would secure it from India were not shared by key figures in Pakistani foreign policy. Likewise, Ayub Khan’s views stood in stark contrast from Bhutto’s vision of a nuclear Pakistan. Khan questioned the utility of a nuclear capability when the people of a ‘poor country’ could not afford ‘schools, hospitals, and industry.’¹¹⁴ Bhutto did not believe that in case of a war with India, the United States would come to Pakistan’s rescue. As such, he viewed these matters to be secondary to the nation’s security concerns. Ultimately, Bhutto’s position became the dominant one as Pakistan embarked on a nuclear weapons programme and continues to shape Pakistani attitudes toward its deterrent.

¹¹¹ INT002SNT

¹¹² Weissman, Steve and Krosney, Herbert (1981), *The Islamic Bomb*. New York: Times Books. P. 50

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

1999 saw new developments, as Pervez Musharraf staged a coup, overthrowing Nawaz Sharif. This event and those following it were crucial to defining the balance of power in South Asia and the role of nuclear doctrines in it.

Within hours of the coup in Pakistan and perhaps not coincidentally, the United States Senate, by a vote of 51-48, defeated one of President Bill Clinton's most cherished foreign policy objectives: the Comprehensive Test Ban Treaty. Opponents, pointing to the actions of India and Pakistan, argued that the treaty was unenforceable. But Carl Levin of the Senate's Armed Services Committee defended the treaty. "We no longer have standing when we defeated this treaty, to tell India or Pakistan 'don't test nuclear weapons'," he exclaimed, "the Senate majority has turned its back on fifty years of American leadership against the spread of weapons of mass destruction."¹¹⁵

South Asian nuclear arsenals became especially worrisome in light of the escalations resulting from the 2001 terrorist attacks in Kashmir and the 2002 attack against the Indian parliament. The nuclear standoff came to an end when Indian Prime Minister Atal Bihari Vajpayee declared in 2003 that he would be sending an ambassador to Pakistan and attempting to initiate peace talks.¹¹⁶ The initiative was reciprocated by Islamabad and the two parties normalised their relations in the following months. Nevertheless, these events shaped the two countries' approach to their respective foreign policies and nuclearisation.

The 1970s marked the beginning of the economic and political growth of Saudi Arabia and other Arab states in the Persian Gulf. Several Arab countries used their resources to assist Pakistan when it became engaged on the Bengali front. These included Saudi Arabia's financial aid and Jordan's transfer (with approval from Washington) of F-104's (during a time when the United States implemented an arms embargo). This aid 'was largely symbolic, and had only partially offset India's overwhelming superiority in the air.'¹¹⁷ This conventional superiority is what Islamabad sought to counter by developing a nuclear capability. However, India's nuclear ambitions preoccupied Bhutto. In 1969, he wrote that, 'India is unlikely to concede nuclear monopoly to others and, judging from her own nuclear programme and her diplomatic activities (...), it appears she is determined to proceed with her plans to detonate a nuclear bomb'. Bhutto contends: 'if Pakistan restricts or suspends her nuclear programme, it would not only

¹¹⁵ Stoessinger, John (2008), 201

¹¹⁶ *Ibid.*, 203

¹¹⁷ Weissman, Steve. Krosney, Herbert (1981), 52

enable India to blackmail Pakistan with her nuclear advantage, but would impose a crippling limitation on the development of Pakistan's science and technology.¹¹⁸

It was only natural for Pakistan to attempt to appeal to the rest of the Muslim community, especially Middle Eastern states, when it reached a decision to develop a nuclear capability. Indeed, while the aid provided by Muslim states did not prevent Pakistan from losing the war, 'to Bhutto, the brotherly support suggested the possibility of far greater cooperation in the future.'¹¹⁹ However, the pursuit of the Pakistani leadership's 'pan-Islamic mission' was challenging, as it was met with 'suspicion among Arab leaders.' In fact, the general view among Arabs seemed to be one of Pakistan as the "'Trojan horse" of British imperialism' and Islamabad's attempts to portray itself as the natural leader of 'Islamic solidarity' were not welcomed. While Pakistani leaders viewed their country's central location among Muslim states and its 'large population' as a positive attribute, which could help the cause, Arab states viewed it as conflicting with their interests. Among the Arab states, Egypt was especially opposed to Islamabad's ambitions, as Cairo has seen itself as the leader of the Arab world.

Pakistan's efforts in the 1950s to move pan-Islamic organisation from the transnational to the interstate level proved fruitless. Its military alliances with the United States in the Southeast Asia Treaty Organization (SEATO) and with Great Britain in the Baghdad Pact alienated it further from Arab states. But the non-governmental, transnational dimension to pan-Islam continued to develop.¹²⁰

Nevertheless, the idea of Pakistan as a Muslim nation has shaped the country's identity, self-image, and consequently, its foreign policy, including in the field of nuclear arms control. To be sure, the Pakistani bomb was created thanks to Muslim states 'chipping in' to make the Islamic bomb a reality:

Where would an impoverished country like Pakistan ever find the money to build nuclear weapons? For Ali Bhutto, the answer was obvious. Only hours after he had finished meeting with his top scientists under the tent in Multan, the Pakistani leader set off a whirlwind tour of the major Islamic capitals of the Middle East.¹²¹

Among these countries were 'Iran, Saudi Arabia, the United Arab Emirates, as well as Turkey, Syria, Morocco, Egypt, Algeria, Tunisia, and Libya.' These stops gave Bhutto

¹¹⁸ Bhutto, Zulfikar Ali (1969), 153

¹¹⁹ 'The logic was persuasive. Even before the Bangladesh War broke the country apart, West Pakistan had always considered itself part of the Middle East, and foreign policy and defense specialists in London and Washington had always seen it as the protective flank of Western interests in the Middle East.' Weissman, Steve. Krosney, Herbert (1981), 52

¹²⁰ *Ibid.*, 189

¹²¹ *Ibid.*, 53

an opportunity to criticise ‘bitterly his country’s Western allies, especially the United States and Great Britain’ for ‘betraying’ Pakistan.¹²² The result of this Muslim world tour was the political legitimation and securing of funds for the programme. In 1974, Bhutto met with Libyan leader, Muammar Gadhafi at the Lahore Summit. He secured Libya’s political support: Gadhafi declared that he supported the right of ‘the fortress of Islam’ (Pakistan) to pursue nuclear technology.¹²³ Islamabad and Tripoli also concluded a financial deal, worth two hundred million dollars provided to Pakistan in 1975-76. Iran and Saudi Arabia also contributed several hundred million dollars each to Pakistan.¹²⁴

Outside the Muslim world, however, Pakistan’s official discourse before it conducted its first nuclear test was one of ambiguity. In a 1993 interview, A.Q. Khan called the statements according to which Pakistan’s uranium enrichment plant at Kahuta was meant for nuclear weapons ‘just propaganda’. He noted that both the president and prime minister had reiterated the nuclear programme’s peaceful nature and that Islamabad did not need a nuclear weapons capability. He did, however, state that the facility gave ‘Pakistanis sense-respect and a sense of security.’¹²⁵

As argued above, Pakistan’s nuclear discourse was an effective tool for it to receive financial and political support for its nuclear weapons programme from the *ummah*. However, it has not translated into real policy. Indeed, while some in Pakistan argue that Islamabad ought to provide extended deterrence to other Muslim states, the idea does not resonate with the ‘security establishment’. Likewise, Feroz Khan argues against some western non-proliferation circles, which contend that Pakistan could provide Saudi Arabia with a nuclear weapon. He noted that, the policy pursued by Pakistan is to become ‘mainstream’ and accepted as a member of the ‘Nuclear Suppliers Groups’, like neighbouring India. Much of its ‘policy is geared toward that’ and proliferating nuclear weapons in the volatile Middle East would be counterproductive in its pursuit of against this goal. According to Khan, ‘the Saudis tried a lot to get

¹²² *Ibid.*

¹²³ Stengel, Richard, ‘Who has the Bomb?’. *Time* magazine. 2-06-1985. PP. 7-13.

¹²⁴ Tertrais, Bruno (2009), *Le marché noir de la bombe : enquête sur la prolifération nucléaire*. Paris : Buchet/Chastel. P. 37

¹²⁵ Henderson, Simon (September 1993), ‘We Can Do It Ourselves’, *The Bulletin of the Atomic Scientists*. PP. 29-30

Pakistanis to help them but Pakistanis have rejected.’¹²⁶ The following section will present opposing views to those presented by Khan.

The military and command and control

A key concern regarding Pakistan’s nuclear arsenal lies in the relationship between the military and Islamist militants. Indeed, ‘Pakistan has relied on non-state actors to prosecute its policies in Kashmir since its birth in 1947.’¹²⁷ Former Pakistani ambassador to the United States Husain Haqqani explains that he ‘pursued a political solution whereby Pakistan secured nuclear legitimacy in return for shutting down jihad.’ This solution ‘found no interest in the Pakistan Army, the Inter-Services Intelligence (ISI), or the American administration.’¹²⁸

The second concern regarding Pakistan’s nuclear arsenal lies in the fact that the Pakistani military does not share the command and control of the country’s nuclear forces with the civilians. The key civilian decision-makers in the country, including the prime minister, are largely ‘unaware of the extent of the program and its components’ and do not play a key role in nuclear decision-making. ‘To soften critics of the system and to bring a sense of calm to those alarmed at the fuzzy accountability, a Nuclear Command Authority headed by a troika of the president, the prime minister, and the army chief was created in 1989’. However, ‘the key player in this structure, the army chief, candidly admitted that this arrangement was a sham and only for public consumption.’¹²⁹ To preserve this status quo, the military has also been known to use an Islamic discourse to justify its firm grasp on the country’s nuclear weapons programme. For instance, the military was wary of Benazir Bhutto, the leader of the PPP, despite her being Zulfikar Ali Bhutto’s daughter, whose key role in the country’s acquisition of nuclear weapons has been discussed at length. To undermine her credibility, it used two key arguments, both fashioned around her ‘fitness’ to govern a Muslim nation. First, her ability as a woman to lead a Muslim nation was questioned. Second, her ‘loyalty’ to the United States was portrayed as grounds not to trust her with the country’s ‘nuclear secrets’. These arguments were instrumentalised ‘to ensure [...] that the political forces did not unite and remained divided so that the military could play the arbiter. Hence, the

¹²⁶ INT002SNT

¹²⁷ Fair, Christine (2014), 226

¹²⁸ *Ibid.* 282

¹²⁹ Rangachari, T.C.A, Kalia, Ravi (2001), 124

‘military’s covert intelligence wing,’ known as the Inter-Services Intelligence (ISI), formed an alliance with other parties against Bhutto and her party, the PPP. This alliance was ‘built around the Pakistan Muslim League led by Nawaz Sharif who had been promoted by General Zia, and endorsed by the Islamic parties.’¹³⁰

The transfer of nuclear kit to other Muslim states

The pan-Islamic motivation and opposition to western control on nuclear technology played a key role, not only in shaping Khan’s views on the creation and proliferation of the ‘Islamic bomb’, but also that of Pakistani government and military officials including Bhutto.

Bhutto’s perception was this – Pakistan would be a leader in this field and would be able to protect them with a nuclear umbrella. Make a pact with Saudi Arabia and Iran -- similar to what the U.S. had done with other countries like Canada, Japan, Korea etc—and Pakistan could protect them. This was his thinking and that it would also increase Pakistani legitimacy. And this he believed made America very nervous. ‘He’ll unite the Muslims and this will be a threat.’¹³¹

Both Bhutto and General Zia ul-Haq ‘used religious ideologues and religious parties to score short term gains.’ They were both eager for Islamabad to develop ties to the Middle East and the rest of the *ummah* and, to achieve this end, ‘portray[ed] themselves as good and true Muslims in front of their own people and Muslims worldwide’. Hence, they ‘both promoted Islamization by their rhetoric about such nebulous concepts as Islamic economics, Islamic television, Islamic clothing and even Islamic bomb.’¹³² These were part of a bigger effort undertaken by Bhutto, which ‘provided for the creation of an Islamic state within the constitution allowing an opportunity for the future Islamization of the country.’¹³³ Since, democracy and religion have had a complex relationship in a country where, both two key factions, the military and Islamic parties, have accepted the former, ‘as long as it serves their special interests’, while at the same time ‘remain[ing] fundamentally opposed to it.’¹³⁴

Islamic parties have been instrumental in preserving the status quo, as the military has often used them to advance its own agenda. This, as discussed in this chapter, has been the case regarding the command and control of the nuclear forces. This gradual increase

¹³⁰ *Ibid.*, 122-123

¹³¹ Kamran Shahid interview with A.Q Khan.

¹³² Avari, Bujor (2013), 238

¹³³ Iqbal, Zafar in Kalia, Ravi (2011), 143

¹³⁴ Grage, Frederic in Kalia, Ravi (2011), 168

in the role and place of Islam in the country's domestic politics also manifested itself in its foreign policy and facilitated A.Q. Khan's endeavours, by promoting a pan-Islamic discourse, which enabled the country to build trust with fellow Muslims across and beyond the Middle East. While Bhutto developed good ties with Iran and even signed an agreement with Tehran, Haq's Sunni allegiance led him to drift away from Pakistan's western neighbour and move toward Saudi Arabia. The result of this move was the establishment of good Saudi-Pakistani relations, which further promoted Islamisation in Pakistan, given Saudi Arabia's role in supporting the export of Wahhabism.¹³⁵ Both men (Bhutto and Haq) further promoted the implementation of *shari'a* and the increasing Islamisation of Pakistan.¹³⁶ Zia ul-Haq considered Pakistan as the 'Citadel of Islam' and 'embarked upon a process of Islamization'. By doing so, he wanted Pakistan to 'unitedly [...] establish Islam as a way of life' and to unite 'more so in the matter of religion.'¹³⁷ Likewise, Pakistan, with the help of Saudi Arabia, provided support to the *mujahidin* in Afghanistan.¹³⁸

In response to whether there 'was a soft spot/or concern about North Korea and Iran getting this technology/information?', A.Q. Khan responded: 'Well, it was this – they were our friends. It is not a crime to help out friends.'¹³⁹ He further asserted, with regards to allegations regarding Iran's attempts to produce the bomb, 'they have signed the NPT and we had not so we could do anything we wanted. Iran is not allowed to go to high enrichment levels, and if they do in secret it will violate the NPT and will be subject to Security Council sanctions.' Yet, Khan supported Iran's right to develop the bomb in face of threats: 'If they have a threat they should do it – every country has a right.' These views are close to those of Bhutto as expressed by Khalid added, 'I think Bhutto had always been a believer in Third World countries having the nuclear option'.

As a Third World leader, and intellectual, someone who knew the West because he had been trained in the West, he questioned the basic assumption that only the Western powers and the Soviet Union were capable of having nuclear weapons and handling them with responsibility.¹⁴⁰

Bhutto viewed the non-proliferation regime as biased and complained about the *status quo* being accepted as such. 'Why is it that only the Western countries and the Soviet

¹³⁵ Avari, Bujor (2013), 238

¹³⁶ *Ibid.*, 239

¹³⁷ Embree, Ainslie, in Kalia, Ravi (2011), 236

¹³⁸ Avari, Bujor (2013), 240

¹³⁹ Kamran Shahid interview with A.Q. Khan.

¹⁴⁰ Weissman, Steve. Krosney, Herbert (1981), 49

Union can have nuclear weapons and not be questioned? And why is it that everybody takes it for granted as part of the world as it is?¹⁴¹

These ideas persist and shape Pakistan's view on the non-proliferation regime. Mushahid Hussain, the Chairman of the Parliamentary Committee on Defence expressed similar views in 2012 regarding the Iranian nuclear dossier. 'Hussain told the visiting Iranian delegation that Pakistan rejects any double standards on the nuclear issue and strongly feels that the standoff with Iran on the nuclear issue should be resolved peacefully, without threat or use of force.'¹⁴² According Feroz Khan, this view on the non-proliferation regime stems from Pakistan's own experience and its view of the bias toward Muslims. Indeed, the opposition of the west to Islamabad's nuclearisation is viewed 'not just a non-proliferation concern, but a reaction to a Muslim bomb. Israel and India have developed nuclear weapons, but one is Hindu, the other Jewish. So, the view is that the obstacles were created because [Pakistan] was a Muslim country.' Nevertheless, Khan notes that, 'the security establishment is happy that there are negotiations with Iran'. This is due to three factors. First, the role of the A.Q. Khan network in providing Tehran with nuclear technology remains an issue for Pakistan. Second, a successful and peaceful resolution of the Iranian nuclear crisis would in turn mean a decrease in 'pressure from the UAE and Saudi Arabia' on Pakistan. Third, Pakistan would not find itself 'between a nuclear Iran and a nuclear India', both of which, share a 'special relationship'.¹⁴³

Pakistan's accession to a nuclear weapon state status had greater implications for nuclear proliferation, particularly in the Muslim world. The father of the Pakistani bomb also became the father of the greatest and most effective illicit trade and procurement network in history. Khan's faith greatly influenced his striving to assist the *ummah* in proliferating. The Pakistani nuclear programme was largely dependent on illicit trade and this procurement activity has heightened since at least 2004.¹⁴⁴

Khan and his associates slowly expanded their import operation [...] into a transnational illegal network that also exported gas centrifuges and production capabilities, as well as design for nuclear weapons, to other mostly Muslim countries to turn a profit and provide additional business for their international collaborators. In

¹⁴¹ *Ibid.*

¹⁴² Pakistan Rejects "Double Standards" on Iran's Nuclear Issue.' Tribune.com.PK. 3/12/2012.

¹⁴³ INT002SNT

¹⁴⁴ Venter, Al (2007), 53

addition to money, Khan was also motivated by pan-Islamism and hostility to Western controls on nuclear technology.¹⁴⁵

As noted throughout the present chapter, the Pakistani nuclear narrative is a predominantly pan-Islamic one. In the words of former president Zia ul-Haq: 'It is our right to obtain nuclear technology. And when we acquire this technology, the entire Islamic world will possess it with us.'¹⁴⁶ This idea was implemented in two ways. First, as discussed in the first half of this chapter, the acquisition of the bomb by Pakistan, fulfilled this idea. Yet, as noted in the previous sections, this has not translated into actual policy, even though it served Pakistan secure funding and political support from Muslim states. In a way, the benefits of the pan-Islamic nuclear narrative were one way, as they served Islamabad's purposes, without offering funders with the protection they have sought. Second, this section demonstrates, the statement had a literal meaning and implication, implemented by A.Q. Khan, through his illicit trafficking network, which benefited Muslim states. The extent to which Khan and Pakistani decision-makers were driven by pan-Islamic ideals to proliferate nuclear knowhow, technology, and materials, has been debated by those who have discussed the topic. While some argue that this motive was merely secondary to Khan's own interests and greed,¹⁴⁷ there are clear indications that Khan's faith shaped his views on proliferation and defence. This faith seems to have strengthened upon Khan's return to Pakistan from the Netherlands: 'he became devout and cite[d] Allah's name more and more in his public appearances.'¹⁴⁸ As such, he supported the idea of an Islamic bomb, which would allow the *ummah* to collaborate on defence issues. In fact, even the North Korean case, one of a communist, 'Godless' state, can be explained by Khan's dichotomist view of world politics and security, one in which the west's biases dictate the actions of the rest. Therefore, empowering 'the rest', regardless of their allegiance, would in turn help the Muslim community by undermining the west. The wish for the Muslim world to be able to protect itself and to be 'on par' with other dominant civilisations was not only realised thanks to the acquisition of the 'Muslim Bomb' in Pakistan, but also an endeavour transcending its borders, facilitated by the A.Q. Khan network. As noted previously, much like Bhutto, Khan himself was driven by pan-Islamic ideals and opposition to the

¹⁴⁵ *Ibid.*, 59

¹⁴⁶ Statement from 1986.

Tertrais, Bruno (2009), 7

¹⁴⁷ Clary, Christopher, in Russel, James (2006), *Proliferation of Weapons of Mass Destruction in the Middle East: Directions and Policy Options in the New Century*. New York: Palgrave Macmillan. P. 105

¹⁴⁸ Tertrais, Bruno (2009), 54

non-proliferation regime, which he viewed as biased and promoting the interests of the west, at the expense of the rest.¹⁴⁹ In A.Q. Khan's view, 'the West has been leading a crusade against the Muslims for a thousand years'.¹⁵⁰ These views, Feroz Khan notes, 'on the street, A.Q. Khan's view is popular. Non-proliferation is not taken seriously because of Pakistan's experience' and the normalisation of the Indian case despite the two countries developing a nuclear arsenal outside the NPT. Therefore, many Pakistanis 'see it as, "why not Iran?"'¹⁵¹

After the success of Khan's illicit procurement network in Pakistan, he and 'his associates slowly expanded their import operation into a trans-national illegal network that exported whole gas centrifuges and production capabilities, as well as designs for nuclear weapons, mostly to Muslim countries.'¹⁵² Iran and Libya were Khan's 'main costumers' in the Muslim world, along with North Korea, and 'other countries, including Egypt, Iraq, and Syria'. Additionally, 'questions remain about whether members of the Khan network, including Khan himself, offered nuclear weapons assistance to terrorists in Afghanistan prior to the fall of the Taliban.'¹⁵³ By doing so, the network 'evolved into an organization that could provide "one-stop shopping" for the wherewithal to produce weapons-grade uranium and for nuclear weapons designs and instructions.'¹⁵⁴ What is more, as noted by Bruno Tertrais, the network became autonomous from the Pakistani state, thus taking 'nuclear cooperation among states' to a different level, 'transforming the nature of proliferation phenomenon.'¹⁵⁵ The network brought two key, well-preserved secrets on the market: 'uranium enrichment technology and the conception of nuclear weapons.'¹⁵⁶

In 1984, Tehran was in the middle of the Iran-Iraq War, during which Baghdad used chemical weapons. Having decided to resume the nuclear programme undertaken under the Shah, the Iranian leadership approached Islamabad for equipment and training.¹⁵⁷ While Zia ul-Haq was interested in cooperating with Iran, a number of issues, including Iran's regional status and its rivalry with Pakistan's 'godfather', Saudi Arabia, limited

¹⁴⁹ Albright and Hinderstein in Russel (2008), 50

¹⁵⁰ Goldberg, Jeffrey and Ambinder, Marc, 4-11-2011.

¹⁵¹ INT002SNT

¹⁵² Albright and Hinderstein in Russel (2008), 49

¹⁵³ *Ibid.*, 50

¹⁵⁴ *Ibid.*, 49

¹⁵⁵ Tertrais, Bruno (2009), 14

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*, 67

this cooperation. A.Q. Khan travelled to Tehran and Bushehr in 1986 to meet with one of the key players in the Islamic Revolutionary Guard Corps (IRGC), Mohammad Eslami,¹⁵⁸ before officially visiting the country again a year later. During a meeting at Tehran's Amir Kabir University of Technology, he advised the Iranians to pursue weaponisation through uranium enrichment, rather than via Bushehr.¹⁵⁹ Starting in 1987, [the Atomic Energy Organisation of Iran – AEOI] interns are sent to Pakistan¹⁶⁰ and Iran becomes Khan's 'first major customer'.¹⁶¹ Khan went beyond his mandate in assisting Iran.¹⁶² Indeed, Zia ul-Haq had 'refused Tehran's request to provide it with the entire nuclear cycle'.¹⁶³ This was due to 'Zia's pro-Sunni, anti-Shia credentials'.¹⁶⁴ What Khan accurately told the officials was that he merely offered Iran 'obsolete materials', including P-1 centrifuges, no longer needed by Pakistan. Nevertheless, while Zia ul-Haq was perhaps not involved or aware of the entire affair, other officials certainly were. In fact, 'some key generals envisioned forming an alliance allowing for the dependence on the United States to end, in which Afghanistan, Iran, and perhaps even Turkey participated'.¹⁶⁵ These included Mirza Aslam Beg, former Chief of Army Staff. Cooperation between the two countries expanded in 1988, with the end of the Iran-Iraq War, enabling Tehran to allocate more resources to revive its nuclear programme. This was facilitated by a number of other developments in Iranian domestic politics, including, the death of Ayatollah Khomeini, who did not fully endorse nuclear technology, pro-nuclear Rafsanjani acceding to presidency, and Zia ul-Haq's death in Pakistan.¹⁶⁶ What Iran received from the network included 'centrifuge designs and sample centrifuges', including the P-1 in the 1994-95 period and drawings of the P-2 in 1995 or 1996.¹⁶⁷ 'The Khan network's assistance, even if limited to drawings and a few components, was apparent and allowed Iran to skip many difficult research steps'.¹⁶⁸ Once back in power, Benazir Bhutto is informed upon her visit to Tehran by Rafsanjani in 1996 of the scope of Pakistani-Iranian nuclear cooperation. She had previously

¹⁵⁸ Mohammad Eslami was the head of the Defence Industries Training and Research Institute. He led the IRGC delegation in their meetings with A.Q. Khan.

¹⁵⁹ Tertrais, Bruno (2009), 68

¹⁶⁰ *Ibid.*

¹⁶¹ Albright and Hinderstein in Russel (2008), 50

¹⁶² Tertrais, Bruno (2009), 70

Clary, Christopher, in Russel, James (2006), 101

¹⁶³ Tertrais, Bruno (2009), 70

¹⁶⁴ Clary, Christopher, in Russel, James (2006), 99

¹⁶⁵ Tertrais, Bruno (2009), 70

¹⁶⁶ *Ibid.*, 71

¹⁶⁷ Albright and Hinderstein in Russel (2008), 50

¹⁶⁸ *Ibid.*

objected to such cooperation, but '[was] not able to oppose Abdul Qadeer Khan's army.'¹⁶⁹ As discussed in the next chapter, the Iranian nuclear programme was revealed in 2002 and the collaboration between Tehran and the network effectively ended around that time.

The Khan network also offered to assist Saddam Hussein's Iraq 'in building centrifuges and making nuclear weapons.'¹⁷⁰ Baghdad had begun to '[invest] heavily in facilities to develop and make nuclear weapons' in 1988-1989.¹⁷¹ But, the beginning of Operation Desert Storm on 17 January 1991, bringing the coalition forces to Kuwait, marked the end of the discussions between Iraq and the network.¹⁷² By then, 'Iraqi experts still had many theoretical and experimental questions to answer. They were also having trouble developing the precision electronic equipment needed in a nuclear weapon – and efforts to obtain the equipment abroad had been thwarted.'¹⁷³

Likewise, Syria was eager to equal Israel's conventional and nuclear forces by acquiring a missile and chemical capability. Starting in 1997, Khan attempted to persuade Damascus not only to embark on a nuclear programme, but also to serve as an intermediary in the exports to Iran.¹⁷⁴

The network's 'most ambitious sale was to Libya', where it 'committed to supply [...] a wide range of items, including a turnkey gas-centrifuge plant; the wherewithal to make centrifuges, nuclear weapons designs, uranium hexafluoride, and the ability to make uranium hexafluoride.' Nevertheless, 'by the time Libya renounced nuclear weapons in late 2003, it had not yet received many of these items.'¹⁷⁵ As discussed in the previous section, Libya was a great financial contributor to Pakistan's nuclear weapons programme and 'even served as an intermediary in some of its imports (uranium from Niger), hoping to benefit in exchange from the research conducted by Islamabad.'¹⁷⁶ Bhutto's arrest in 1977 ended 'the hopes of a quick access to the bomb for Libya,' but the 1986 bombings of Tripoli and Benghazi by the United States further determined

¹⁶⁹ Tertrais, Bruno (2009), 75

¹⁷⁰ Albright and Hinderstein in Russel (2008), 51

¹⁷¹ Albright, David. Hibbs, Mark (January/February 1992), 'Iraq's Bomb: Blueprints and Artifacts'. *The Bulletin of the Atomic Scientists*, 31

¹⁷² Tertrais, Bruno (2009), 81

¹⁷³ Albright, David. Hibbs, Mark (January/February 1992), 31

¹⁷⁴ Tertrais, Bruno (2009), 87

¹⁷⁵ Albright and Hinderstein in Russel (2008), 52

¹⁷⁶ Tertrais, Bruno (2009), 90

Gadhafi to develop a nuclear capability.¹⁷⁷ In 1997, the Khan network made an unprecedented offer to Libya: providing it with ‘the complete installations allowing the acquisition of the bomb in a few years.’¹⁷⁸ In September 2000, the network delivered two P-2 centrifuges to Libya, which resulted in an order of ten thousand centrifuges (enough to produce enough fissile material for up to ten nuclear weapons per year) to be delivered the following year.¹⁷⁹ At that point, the network extended its activities to Malaysia, where it began to produce several components of the P-2 centrifuges.¹⁸⁰ By the time the network became ready to deliver the centrifuges, the Libyan government announced its decision to end its nuclear and chemical weapons programmes and abandon its ballistic missile capability.¹⁸¹ Indeed, Saddam Hussain’s fall, arrest, and conviction, convinced Gadhafi to give up his nuclear ambitions.

This event, combined with the revelation of Natanz in Iran and the satellite imagery in North Korea, providing evidence of a C-130 aircraft belonging to the Pakistani Air Force, made it ‘impossible for Musharraf to deny A.Q. Khan’s activities any longer’. As a result, Musharraf distanced himself from Khan, who was put under house arrest.¹⁸² Later, Khan confessed to a ‘strictly clandestine operation’ and ‘having been solely responsible for unauthorized proliferation activities’. This confession ‘was, in reality, a ruse to cover up the fact that the covert trade in the nuclear bazaar resulted from the foreign policy of a nation, plotted and supervised by Pakistan’s military rulers.’¹⁸³ Nevertheless, these revelations ‘generated significant concerns about the true nature and scale of nuclear black market’ and ‘the apparent shortcomings of the current non-proliferation regime with regard to deterring and thwarting illicit nuclear activities’.¹⁸⁴

As illustrated throughout this section, the Muslim faith played a key role in shaping the views of A.Q. Khan and his endeavour to provide his country with a nuclear capability and other countries across the ‘House of Islam’ with the ability to develop such a capability. Hence, the Muslim faith played a key role in the creation of the ‘Islamic

¹⁷⁷ *Ibid.*, 91-92

¹⁷⁸ *Ibid.*, 93

¹⁷⁹ Corera, Gordon (2006), *Shopping for Bombs – Nuclear Proliferation, Global Security and the Rise and Fall of the A.Q. Khan Network*. Oxford: Oxford University Press. 109

¹⁸⁰ Tertrais, Bruno (2009), 96

¹⁸¹ Bowen, Wyn(2006), *Libya and Nuclear Proliferation: Stepping Back from the Brink*. The Adelphi Papers. 46:380. London: Routledge (IISS). 7

¹⁸² Corera, Gordon (2006), 192

Tertrais, Bruno (2009), 104-109

¹⁸³ Rangachari, T.C.A. in Kalia, Ravi (2001), 125

¹⁸⁴ Bowen, Wyn (2006), 83

bomb' among key Pakistani proliferation decision-makers. Islam's influence on the matter goes beyond the country's core leadership and key scientists. 'Sympathy for jihadist-oriented groups among at least some Pakistani military men has been acknowledged for years, even inside Pakistan.' In fact, 'different aspects of the military and security services have different levels of sympathy for the extremists. The navy is high in sympathy.'¹⁸⁵ In September 2014, for instance, a new branch of Al-Qaeda, Al-Qaeda in the Indian Subcontinent (AQIS), developed in response to ISIS, recruited Pakistani naval officers to lay siege on a dockyard to seize the frigate.¹⁸⁶ 'Organizations across South Asia have adapted and expanded their structures to support not only militancy but also political and social activities.' What is more, 'some militant groups have created political structures to provide a façade of legitimacy and to grow their political visibility'.¹⁸⁷ These groups attempt to fill the void left by governments in the region, including the Pakistani government, and thereby securing popular support, 'providing goods and services like justice, health care, and education.'¹⁸⁸

Islamic discourse has shaped much of Pakistan's nuclear narrative, allowing it to legitimise its nuclear weapons programme among Muslim states. This legitimisation generated political and financial support for Islamabad's nuclear ambitions and fulfilled another function: building a base for what became A.Q. Khan's nuclear black market. What is more, A.Q. Khan's worldview and faith were instrumental in shaping his views on nuclear proliferation and international affairs, leading him to naturally gravitate toward 'fellow Muslims'.

Conclusion

This chapter discussed the role of the Muslim faith in shaping nuclear policy and narrative in Pakistan. It provided an overview of the country's history from decolonisation in South Asia, the birth of the Muslim state, and the various conflicts marking its existence. It argued that the 'whole idea of Pakistani sovereignty is based on Islam. Moreover, 'Pakistan may have legitimate security concerns, but at the root of its revisionism is not security but rather deep ideological commitments that predate the

¹⁸⁵ Goldberg, Jeffrey and Ambinder, Marc. 'Nuclear Negligence'. *National Journal*. 4-11-2011.

¹⁸⁶ Panda, Ankit. 'Al Qaeda's worrying ability to infiltrate the Pakistani military', *The Diplomat*, 18-09-2014.

¹⁸⁷ Sanderson, Thomas. Fellman, Zachary. Nelson, Rick. Sanok, Stephanie. Wise, Rob. 'Trends in Militancy across South Asia' (2013), 16

¹⁸⁸ *Ibid.*

independence of the state.’¹⁸⁹ So, the perceived threat from a country that didn’t accept [its sovereignty] in first place’ served as a vehicle to develop nuclear weapons to secure the nation, but also do so with the support of the *ummah*.¹⁹⁰ It highlighted the determining role of Islam as the pillar of the Pakistani nation and state, and in fashioning the views of the leadership in its nuclear endeavours. It argued that the Islamic discourse in Pakistan, unlike in the cases of Al-Qaeda and Iran, albeit with conflicting rationales, is deprived of any legal and ethical debate. Instead, it has been shaped around the notions of security needs and the element of prestige. It discussed how Bhutto’s views of the *ummah* and A.Q. Khan’s religious beliefs shaped their respective attitudes toward the pursuit of the Pakistani bomb and proliferation beyond Pakistan’s borders. The previous sections further assessed Islamabad’s effective outreach campaign to Muslim states to secure both political and financial support for its nuclear ambitions, without developing an ‘active policy’ for extended deterrence for its funders.¹⁹¹ The chapter further noted the importance of the Pakistani nuclear arsenal in the country’s national identity, which in turn dictates its approach to the non-proliferation regime. ‘Difficult though this is to employ, it is vital for Pakistan to give the greatest possible attention to nuclear technology, rather than to allow herself to be deceived by an international treaty limiting this deterrent to the present nuclear Powers.’¹⁹² Pakistan, therefore, presents a successful model for the utilisation of a religious discourse to shape nuclear policy and narrative, as it achieved its goals of receiving support at home and abroad. Chapter Six examines Iran’s nuclear programme and narrative, and finds that, unlike Pakistan, Tehran’s utilisation of the Islamic discourse has fallen short of achieving the goals pursued by the leadership. This has led Tehran to increase the role of nationalism in its nuclear narrative.

Domestically, this is mainly due to one of the major differences between Pakistan and its western neighbour, which lies in the fact that unlike Iran, Pakistan was created as a Muslim state. Hence, the Islamic faith is the centrepiece of Pakistani identity and security, nationalism, and religion are all much more intertwined in Pakistan than in Iran. Therefore, the Pakistani leadership fashioned its nuclear narrative on the idea that nuclearisation is not merely a project for the security of the nation, but also for the

¹⁸⁹ Fair, Christine (2014), 282

¹⁹⁰ INT002SNT

¹⁹¹ *Ibid.*

¹⁹² Weissman, Steve. Krosney, Herbert (1981), 48

entire Muslim world and the perseverance of the faith and tradition established by Muhammad. In order to understand these two approaches, one must underline the difference between the ideas of nationhood as understood in each country. As highlighted throughout this chapter, Pakistan was created as a Muslim state and an inherent part of the *ummah*. By contrast, as discussed in the next chapter, the Iranian notions of nationalism and nationhood are based on historical, cultural, and linguistic ties. What is more, as discussed in the next chapter, Shiite Islam was a tool, which served the purpose of keeping Iran independent both culturally and politically, despite military defeats. This effectively stopped Iran from becoming Arabised first and dissolved in the Ottoman Empire later. The following chapter argues that unlike that which is commonly believed beyond Iran's borders, Shiite Islam continues to be a means, rather than an end, in the country's foreign policy, which manifests itself in its nuclear policy. Hence, while the creation of the state of Pakistan was a means to preserving Islam in the subcontinent and protect the lives of Muslims,¹⁹³ in Iran, the opposite has generally been true: with religion being an instrument to preserve national unity, sovereignty, territorial integrity. Each people's relationship to national and religious identity determines the impact of the Islamic nuclear discourse at home but also abroad. As discussed in the case of Pakistan, this discourse has been very effective in rallying the Pakistani people around their flag and gaining their support for the creation of Allah's bomb. The Iranian response to this religious nuclear narrative has been more complex, as it will be discussed in the last chapter. This is due to the fact that, 'there has been what appears to be an unchallenged acceptance in Pakistan of the idea of the centrality of the umma, the community of believers that links the modern state of Pakistan with the history of Islam in the Indian subcontinent.'¹⁹⁴ By contrast, as demonstrated in Chapter Six, the notion of '*ummah*' is widely rejected by Iranians, who see themselves and their country as inherently different from the rest of the Muslim community.

Abroad, Islamabad's Islamic discourse has been as successful in legitimising and securing funding for its nuclear programme. As discussed in the next chapter, Tehran's discourse has not been as effective. This is due to several factors, which are further discussed in the next chapter and the conclusion. Among these are the lack of a complicated historical relationship and rivalry between Pakistan and other Muslim

¹⁹³ Kalia, Ravi (2011), P. 1

¹⁹⁴ Embree, Ainslie, in Kalia, Ravi (2011), 219

states. This in turn is due to Pakistan's short history, the context in which it was created, its creation as a Muslim state, the lack of territorial disputes between Pakistan and other Muslim states, and the lack of deep religious and ideological disagreements between Pakistan and the rest of the *ummah*.

Chapter Six: Fatwās and centrifuges: The Iranian nuclear dossier

Introduction

In August 2002, the National Council of Resistance of Iran, a dissident organisation, revealed an undeclared nuclear facility, located in Iran's Esfahan province.¹ A few months later, in February 2003, the Iranian government declared the Natanz enrichment facility to the IAEA. The incident marked the beginning of the Iranian nuclear crisis. Since, the Iranian nuclear dossier has become one of the main issues in international affairs and security. In its 2014 Threat Assessment, the U.S. Director of National Intelligence concluded that, 'Iran is trying to balance conflicting objectives.' He identified these objectives as the willingness 'to improve its nuclear and missile capabilities while avoiding severe repercussions-such as a military strike or regime-threatening sanctions'; adding that, 'we do not know if Iran will eventually decide to build nuclear weapons.' However, the report noted that 'Iran has the scientific, technical, and industrial capacity to eventually produce nuclear weapons. This makes the central issue its political will to do so.'²

In the decade following the revelation of Natanz, Tehran developed an intricate nuclear narrative, which comprises several layers, fashioned around two key themes: religion and nationalism. These two themes are shaped around two central ideas. First, the religious theme is based on the idea that Islam inherently prohibits nuclear weapons, by virtue of being indiscriminate in nature. Second, the nationalist theme is centred on the notion of technological innovation and progress. The main points made by the Iranian leadership are that the nation has been able to make considerable scientific and technological progress, especially in areas related to defence, despite western attempts to stop this advancement. This is part of the regime's wider revolutionary narrative, centred on self-sufficiency and what I call the 'enemy narrative'. This chapter analyses the role of the former and assesses its relationship with the latter. To do so, it discusses the complex history and dynamics of nationalism and religion in Iran, shedding light on how the Islamic Republic's narrative has been refashioned since its establishment in 1979. The following sections offer a more nuanced investigation of Iran's nuclear narrative, going beyond the current debate on the Iranian nuclear programme in the

¹ Delpech, Thérèse (2007), 62

² Clapper, James R. (2014), 5

west, often dominated by ill-informed analyses, painting it with a broad brush. It first provides an overview of Tehran's nuclear aspirations, from the pre-revolutionary era to the November 2014 interim deal, before reviewing the country's legal system and political structure. It then assesses the various audiences targeted by Tehran, as well as their response to the Islamic nuclear discourse.

This chapter raises a key question: what is the purpose of the Islamic nuclear discourse created by Tehran? In particular, what are the role and impact of the Islamic legal discourse as crafted by the Islamic Republic? The chapter argues that the religious discourse certainly serves to appease certain factions, most important, regime supporters, in Iran, and convince the Muslim world to legitimise the programme. Its main target audience, however, is the west and the NAM. Indeed, like much of Tehran's post-revolutionary foreign policy narrative, the nuclear narrative is shaped around the concept of an 'enemy' (the west), which has imposed its will on the rest of the international community. According to the Iranian leadership, international laws and organisations are the vehicle for the imposition of western values. In response, Tehran has formulated a religious discourse, to undermine the west. Paradoxically, the Islamic Republic continues to claim that it is in compliance with its international legal obligations. Its main talking points for domestic audiences are based around nationalism. The chapter discusses the nature of Ayatollah Khamenei's nuclear *fatwā* and notes that the decree, of which the scope seems to have changed, has resonated more in the west than in Iran, where indigenous technological progress, despite the 'enemy's sabotage and sanctions, has been emphasised as a source of pride.

Iranian nuclear aspirations: a history

The Shah, his nuclear programme and the revolutionaries

The Iranian quest for a nuclear programme began under the reign of Mohammad Reza Pahlavi, the last king of Iran. As part of the social and military modernisation process undertaken by his father, Reza Shah, the founder of the Pahlavi dynasty, the Shah invested in a nuclear programme. The project was supported by the United States in the context of its civil Atoms for Peace programme, launched by U.S. President Dwight Eisenhower, which aimed to provide U.S. allies with nuclear facilities and materials for research, medical, and energy purposes, while stopping proliferation. The United States

supplied Iran with the Tehran Research Reactor (TRR) and HEU fuel. In 1973, the Shah established the AEOI, with Dr. Akbar Etemad as its head. According to Etemad, the Shah did not believe it was necessary for Iran to pursue nuclear weapons, as he saw his army as the most powerful in the region. However, he believed that the country should be able to adjust its policy and programme if the situation changed and more countries proliferated.³ At the same time, Iran became a signatory to the NPT and ‘concluded a comprehensive Safeguards Agreement with the IAEA as far back as December 1974.’⁴ The same year, Iran proposed what later developed into the concept of a WMDFZ in the Middle East: the creation of a Nuclear Weapon-Free Zone in the region. The civil nuclear project advanced with the support of western powers, and in partnership with U.S., German, and French companies, until the Islamic Revolution shook the country and overthrew the Pahlavi dynasty in 1979.⁵

Officially, Iran articulated much of the same rhetoric about nuclear weapons and nuclear energy under the Shah and the Islamic Republic. The peaceful nature of the programme, the importance of scientific and technological progress, and the eagerness to help neighbouring countries, have all been consistent planks of the Iranian nuclear narrative regardless of leadership. In the words of Prime Minister Amir-Abbas Hoveida’s (under the Shah): ‘The atomic bomb does not interest us [...] we want to master nuclear technology.’⁶ Likewise, the medical component of the nuclear programme (the production of radioisotopes) was emphasised then, as it is now. In fact, the Tehran Nuclear Research Centre was ‘an expression of [the Shah’s] hope that such “peaceful possibilities of nuclear energy” might be used for the benefit of the region as a whole.’⁷

The difference between the Iranian nuclear narrative under the Shah and the Islamic Republic, however, lies in two main issues. First, the Shah’s rhetoric was mainly fashioned around nationalism and he did not engage in a religious discourse. Second, the Shah’s foreign affairs team did not antagonise the west or criticise international laws and institutions. However, contrary to the claims of David Patrikarakos, the ‘reasoning’ behind the ‘public rejection’ of nuclear weapons is not ‘almost entirely different’ in the nuclear narratives of the two regimes. It is further not representative of ‘the antithetical

³ INT001SNT

⁴ Venter, Al (2007), 65

⁵ ‘Iran’, *Institute for Science and International Security*.

⁶ Patrikarakos, David (2012), 51

⁷ *Ibid.*

nature of the two regimes'. In fact, beyond the religious dimension of the Islamic Republic's narrative, much of the narrative remains the same. Indeed, 'the Shah rejected nuclear weapons on the largely practical grounds that they were a danger to both Iran and the world; that, anyway, Iran would not be able to compete with superpower arsenals; and that his conventional forces were adequate enough.'⁸ The Islamic Republic's officials and sources close to them have made similar arguments, especially regarding nuclear weapons undermining rather than increasing security:

Does deployment of nuclear weapons-if possible and of the weak kind such as those of Pakistan-bring us security or insecurity against large countries such as the U.S.? Certainly the answer is insecurity since Iran does not have the superior military technology of the U.S. and these weapons cannot play a deterrent and security role against the U.S. On the other hand, Iran has befriended the small countries of the region and at least for now has no critical problems. Deploying such weapons not only cannot solve any problems for Iran; it will further add to its problems.⁹

Foreign Minister Javad Zarif reiterated these points years later, questioning whether anyone could argue that Pakistan is safer or stronger than Iran with its nuclear weapons.¹⁰

Like many of the projects the Shah had embarked on, the programme was criticised by revolutionaries, as yet another 'treachery' of western imperialists and their puppet regime.¹¹ Arguments against this endeavour encompassed some that are presented today in the west by those fundamentally opposing the programme. One such argument lay in the country's oil and gas resources, according to which the nation would not need nuclear energy, as it had enough fossil fuel for energy purposes for decades to follow.¹² The programme, the revolutionaries argued, was a costly enterprise, irresponsibly pursued by the previous regime.¹³ The revolutionaries 'seemed determined to delegitimize the program on any grounds and thereby dismantle the deposed Shah's grandiose development plans.' This was the case with a number of projects undertaken

⁸ *Ibid.*, 118

⁹ Takeyh, Ray, in Clary, Christopher (2006), 56

¹⁰ INT006SNT

¹¹ Rouhani, Hassan (2011), *National Security and Nuclear Diplomacy*. Tehran: Center for Strategic Research. P. 27

In 1980, the Minister of Energy, the Under Secretary at the Ministry of Energy and head of AEIOI, and the first President of the Islamic Republic, Abolhassan Bani-Sadr, suspended 'large parts of the programme', declaring that 'The construction of these reactors, started by the former regime on the basis of colonialist and imposed treaties, was harmful for the country from the economic, political and technical points of view, and was a cause of greater dependence on imperialist countries.'

Patrikarakos, David (2012), 98-99

¹² Vaez, Ali. Sadjadpour, Karim, 'Iran's Nuclear Odyssey – Costs and Risks', 2013, Washington, D.C.: Carnegie Endowment for International Peace, 20

¹³ INT001SNT

by the Shah. ‘Given the genuine economic case for nuclear power, for both electricity and longer-term goals such as the preservation of oil reserves, it was clear that governmental determination was about more than purely practical concerns.’¹⁴

The Islamic Revolution transformed Iran from a reliable partner to a mysterious and impenetrable puzzle. As noted by Kenneth Pollock, ‘the Iranian regime is often a mystery [...] If it were ruled by a less paranoid, less antagonistic government, we would not be asking these questions [about the potential change in its behaviour should it go nuclear] at all.’ Indeed, without the revolution, the nuclear issue would look very different. ‘But Iran is ruled by the same theocracy that emerged as the victor of Iran’s revolution in 1979.’¹⁵ Pollock goes on to argue that Iran has changed drastically since the revolution but that ‘it has retained many of its most important features - its fears, its pathologies, its ideology, its belligerent insecurity, and its impenetrability.’¹⁶ In fact, contrary to Pollock’s assertions, many of these features were not inherent to the Islamic Republic when it emerged, but were rather created or amplified as a result of the Iran-Iraq War.

1980-1988: WMD, international law, and martyrdom

The Iran-Iraq War, referred to as the ‘imposed war’ by Iran, left a great number of casualties, combatants and non-combatants alike, victims of chemical weapons, and a lasting economic impact. The war continues to haunt the Iranian psyche. It had three major strategic implications for the country’s security thinking and nuclear policy: it created a deep mistrust of the international system in Iran, prompted Tehran to rethink its WMD policy, and shaped the image of the newly established Islamic Republic in the West.

Prior to 1979, Iran did not view Iraq as a significant threat. The country had one of the five greatest military powerhouses in the world and had effectively pushed back Baghdad when it had made claims to the south-western Iranian province of Khuzestan. After the fall of the Shah, however, Iraq decided to resume its efforts to seize Khuzestan. During the war, Saddam Hussein’s Iraq used chemical weapons on Iran and

¹⁴ Patrikarakos, David (2012), 95-96

¹⁵ Pollock, Kenneth (2013), *Unthinkable – Iran, the Bomb, and American Strategy*. New York: Simon & Schuster Paperbacks. P. 3-4

¹⁶ *Ibid.*

its own Kurdish minority. The west, led by the United States, was reluctant to take action or denounce the use of chemical weapons by Baghdad, instead suggesting both sides had used such weapons.¹⁷ This position manifested itself in UNSC Resolutions, including UNSCR 582 (1986), which ‘deplored’ the use of such weapons, without singling out Iraq. This failure to hold Baghdad responsible for what Iran believed to be a war of aggression, as well as the use of chemical weapons, stemmed from the United States’ role at the UNSC and its interest in isolating and weakening the Islamic Republic. This in turn was due to a traumatic chapter in U.S.-Iranian relations: The hostage crisis (1979-1981). Iranian revolutionaries took members of the American diplomatic corps hostage inside the U.S. embassy in Tehran for 444 days. This episode transformed Iran’s status from friend to foe in the eyes of Washington.

Therein resides the first implication of the war. Iran’s deep wariness of international law and institutions stems from the UNSC’s failure to denounce Iraq’s act of aggression and use of chemical weapons. This is illustrated by former president Hashemi-Rafsanjani’s statement following the war: ‘the war taught us that international laws are only scraps of paper.’ Likewise, the commander of the IRGC, Yahya Rahim-Safavi questioned the effectiveness of the non-proliferation regime in promoting security, arguing that conventions would not protect the country.¹⁸

This view led to the second implication of the war. The international community’s inaction led the Iranian leadership to reconsider its posture, adopting a very strong defensive posture, one based on self-sufficiency and self-reliance. As part of this, the Islamic Republic invested heavily in weapons programs, including WMD. Many argued that the country should become self-reliant. Self-reliance, a key goal for the revolutionaries, was now even more central to the Islamic Republic’s worldview. Some went so far as to argue for the acquisition of WMD, describing them as necessary to the security of the country. It was ‘Rafsanjani who made the decision to resume the programme.’ Following this, ‘they [the Islamic Republic] went and bought centrifuges from Pakistan, and tried to enrich uranium. From the beginning, they wanted to have all the options. The reason is that they only went after enrichment.’¹⁹ In 1988, the year the war between the two neighbours ended, Rafsanjani stated that, ‘chemical bombs and

¹⁷ Human Rights Watch. Middle East Watch. *Genocide in Iraq: The Anfal Campaign Against the Kurds - A Middle East Watch Report*. New York: 1993.

¹⁸ Takeyh, Ray, in Clary, Christopher (2006), 58

¹⁹ INT001SNT

biological weapons are poor man's atomic bombs and can easily be produced. We should at least consider them for our defense.'²⁰ He later changed his position – albeit without ever acknowledging he had made such a statement. In 2010, he declared that 'curiosity, the need for defence and deterrence, and above all, greed in some human beings and societies have unfortunately led them to step on a path', where they would hurt the health and life of their own kind.²¹ Likewise, in 1997, in response to the question 'are you after the bomb', Rafsanjani claimed, 'definitely not. We despise these weapons' and added 'we are not going after the atomic bomb, we are not after biological weapons, we will not pursue chemical weapons.'²² Despite this, Tehran admitted to having developed a chemical weapons capability.²³ As noted in Chapter Three, Iran argues that the non-use of chemical weapons during the Iran-Iraq War, when Iraq was using them, serves as a precedent, showing its commitment to the Shiite ethical and legal principles prohibiting their use. Khomeini believed indiscriminate means and methods of warfare to be strictly forbidden under the faith and would not consider them. As a result, the Iranian defence doctrine does not include WMD. Nevertheless, as argued previously, Tehran did pursue a nuclear weapons capability (which according to U.S. intelligence it decided (temporarily, at least) not to continue in 2003), and it also sought a chemical weapon capability. As noted by the Iranian Foreign Ministry Director General Mohammad Alborzi, during the last years of the war, Tehran pursued 'an effective means of deterrence'. He added, 'this particularly became an absolute necessity when threats were made of chemical bombardment of the cities in the final stages of the conflict, and some indeed were carried out against civilian centers'. Hence, 'the decision was made that, on a strictly limited scale, capability should be developed to challenge the imminent threat'. This led Iran to develop a policy of possession but no use of such weapons: 'We declared, at the time, that Iran had chemical weapons capability [...], while maintaining the policy not to resort to these weapons and rely on diplomacy as the sole mechanism to stop their use by the adversary.'²⁴

²⁰ 'Iran's Chemical and Biological Programmes'. *Iran's Nuclear, Chemical and Biological Capabilities: A Net Assessment*. London: IISS (2011)

²¹ 'Hashemi Rafsanjani: Combat against chemical and biological weapons with deeds not with speeches'. JARAS. 28-06- 2010.

²² Wallace, Mike, Interview with Ali-Akbar Hashemi-Rafsanjani. 8-03-1997.

²³ OPCW Conference of the States Parties, Fourth Session 28 June – 2 July 1999, 'Report of the Organisation on the Implementation of the Convention (1 January – 31 December 1998), C-IV/5, para. 6

²⁴ 'The CBW Conventions Bulletin - A Draft Convention to Prohibit Biological and Chemical Weapons Under International Criminal Law', *Quarterly Journal of the Harvard Sussex Program on CBW Armament and Arms Limitation*. Issue No. 43. December 1998. P. 43

The last implication of the war was that it fashioned the image of the Islamic Republic in western minds. The war provided critics of the Islamic Republic, and especially the nuclear programme, with a shortcut to justify their position. They argue that the ‘human wave’ tactic²⁵ Iran used during the war provides evidence of the importance of the notion of martyrdom. They further describe Iran’s obsession with martyrdom and its messianic, apocalyptic, and mystic rationale and agenda would lead the country to become emboldened and commit ‘mass-suicide’.²⁶ These assertions are based on the idea that, ‘Iran indeed defied the kind of rational behavior that might have been expected of a state in its identical situation’, supporting their claims with Khomeini’s early statements on nationalism,²⁷ discussed further throughout this chapter. However, these analyses stretch a tactic to explain all arenas of the Islamic Republic’s decision-making and fail to consider the evolution of its rhetoric and policies. These analogies are problematic, as the tactics used during the war served a particular and limited purpose. In fact, the Islamic Republic’s policies have been generally pragmatic, albeit not necessarily in accordance with Iranian national interests as defined by other factions in the country. As highlighted by Menashri, ‘Khomeini could theorize about an ideal Islamic state; once in power, he (and even more so his disciples) realized that they had to make compromises as a pragmatic response to the exigencies of the situation.’²⁸ Even during the Iran-Iraq War, the leadership was ‘trying to make rational decisions about the best way to prosecute the war and to consolidate the Islamic Republic.’²⁹ This includes what Dore Gold sees as yet another piece of evidence of Iran’s irrationality: The decision to prolong the war for six years, once it recovered its lost territories from Iraq after two years.³⁰ This decision was made because Iranian leaders believed this would be the only way to deter Baghdad.³¹ Therefore, while the effectiveness and costs of this decision can be questioned, it cannot be argued that this was a suicidal move. Hence,

²⁵ Wright, Robin (2001), *Sacred Rage: The Wrath of Militant Islam*. New York: Simon & Schuster. P. 37

²⁶ Tertrais, Bruno (2007), 87

²⁷ Gold, Dore *The Rise of Nuclear Iran – How Tehran Defies the West*. Washington, D.C.: Regnery Publishing, Inc. P. 23

Gold supports his claims by quoting Khomeini saying that ‘we do not worship Iran, we worship Allah. For patriotism is another name for paganism. I say let this land burn. I say let this go up in smoke, provided Islam emerges triumphant in the rest of the world.’

²⁸ Menashri, David (1997), ‘Revolution at a Crossroads – Iran’s Domestic Politics and Regional Ambitions’. Policy Brief No. 43. Washington, D.C.: The Washington Institute for Near East Policy. P. xiii

²⁹ Tracy Samuel, Annie (2011), ‘Attacking Iran: Lessons from the Iran-Iraq War’, Policy Brief, Belfer Center for Science and International Affairs, Harvard Kennedy School, Cambridge, M.A. P. 7

³⁰ Gold, Dore (2009), 25

³¹ Tracy Samuel, Annie (2011), 7

critics of the Islamic Republic and its nuclear programme continue to use the Iran-Iraq War as evidence of the accuracy of their claims. These analyses should be viewed with scepticism, as they do not take into account the complexity of Iranian political culture. Instead, they are based on erroneous readings of Shiism and its role in Iranian strategic thinking. Hence, claims according to which Tehran cannot be deterred or contained, based on these readings, are fundamentally flawed.³²

The post-war era

Iran's nuclear programme was resumed during the war despite initial reticence from revolutionaries to invest in such technology. During the last year of the war, the AEOI paid the Applied Research Institute in Argentina (INVAP) to convert the TRR from HEU to Low Enriched Uranium (LEU). The reactor began operating with LEU in 1993.³³ The following year, Tehran signed an agreement and began to construct the Voda Voda Energo Reactor (VVER) 1000WMe LWR with Russia in Bushehr.³⁴ In an effort further to develop its nuclear programme, as discussed in Chapter Five, Iran procured P-1 and P-2 centrifuge designs and other technology from the A.Q. Khan network. In 2003, news of covert nuclear activities surfaced internationally, leading to concerns regarding their possible military dimension. The programme quickly became one of the most controversial issues in contemporary security. In fact, 'the fear of the Iranian threat [...] is more widespread today than fear of the Soviet threat was in 1985, even though at that time the Soviet Union possessed the largest nuclear arsenal in the world and today Iran doesn't have a single nuclear weapon.'³⁵

Iran's nuclear programme has been the source of many controversies, leading many to question its 'true' nature. The IAEA has expressed its concerns over the 'possible military dimensions' of the Tehran's nuclear programme.³⁶ As of November 2012, Iran had produced an estimated 137.3 kg of Uranium Hexafluoride (UF₆) enriched up to twenty-percent U-235. The programme currently includes uranium mining, milling,

³² Tertrais, Bruno (2007), 89

³³ 'Tehran Research Reactor (TRR)', The Institute for Science and International Security.

³⁴ Bushehr Nuclear Power Plant (BNPP), The Nuclear Threat Initiative.

³⁵ Asal, Victor. Early, Bryan. 'Are We Focusing on the Wrong Nuclear Threat?' *Foreign Policy*. 24-05-2012.

³⁶ 'Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran,' Report by the Director General, the International Atomic Energy Agency, (GOV/2011/65), 8-11-2011.

conversion, and enrichment capabilities.³⁷ The following sections provide an overview of Iran's key nuclear facilities and alleged activities.

Key contentious facilities

Iran's key nuclear facilities include research reactors such as the TRR, mentioned previously, and a thermal heavy water reactor under construction in Arak (IR-40), the Bushehr Nuclear Power Plant (BNPP), enrichment-related facilities including the Fordow Fuel Enrichment Plant and the Natanz Enrichment Complex the Uranium Conversion Facility (UCF) at Isfahan, the Jabr Ibn Hayan Multipurpose Laboratories (JHL) in Tehran, and weaponisation sites, including the Parchin Military Complex.³⁸

Enrichment

Enrichment has been one of the key controversies of the Iranian nuclear programme, given the proliferation concerns surrounding it. Many Iranians, regardless of their views of their country's nuclear programme, believe enrichment to be a necessary component of it, given Iran's experience of technology and fuel denial since the revolution.³⁹ Natanz houses the Fuel Enrichment Plant (FEP) and the Pilot Fuel enrichment Plant (PFEP). It consists of three underground buildings, which have the capacity hold fifty thousand centrifuges. 'Iran covertly moved its gas centrifuge research, development and assembly operations to Natanz' when it decided to dismantle the R&D workshops of Kalaye Electric Company in 2002.⁴⁰ Critics have pointed out that Iran's ambitions, as formulated by its leadership, do not match its capability. They highlight that once finished, Natanz would only produce twenty tonnes of fuel per year, an amount not sufficient for a single reactor.⁴¹

The Fordow Fuel Enrichment Plant is another controversial site. It is located near Qom and can hold sixteen IR-1 centrifuge cascades with a total of 3,000 centrifuges. The

³⁷ 'Iran Country Profile'. *Nuclear Threat Initiative*. February 2013.

³⁸ 'List of locations relevant to the implementation of safeguards in Iran', Annex 1, GOV/2004/83. The International Atomic Energy Agency.

³⁹ INT001SNT- INT006SNT

⁴⁰ 'Natanz Enrichment Complex'. *Nuclear Threat Initiative*.

⁴¹ Tertrais, Bruno (2007), *Iran – La Prochaine guerre*. Pris : Le cherche midi. P. 36

facility was revealed to the IAEA in 2009 but its location was disclosed by the United States, France, and the U.K.⁴²

Both Natanz and Fordow have been controversial due to three reasons. First, the role of external actors in unveiling the activities and location respectively of the two sites has led the international community to be suspicious of Tehran's intent. Second, the two facilities are either partially (Natanz) or completely (Fordow) underground, arousing doubts around the activities, which take place in them. The Iranian government, however, maintains that its facilities are concealed underground to protect them against potential aerial strikes by Israel or the United States. Lastly, the two sites are enrichment facilities. The very existence of an indigenous enrichment programme in Iran has been a source of contention in the west, with some arguing that Tehran does not need such a programme and should procure its uranium from the international market. According to this viewpoint, the only possible explanation for domestic enrichment is Tehran's willingness to enrich to a higher percentage and eventually to weaponise. Iran, however, contends that its efforts to buy the uranium needed for its Tehran reactor were left unanswered, leading it to become self-sufficient. Indeed, the notion of self-reliance in meeting its 'practical needs' is a key element of Iran's reasoning behind its nuclear endeavours. Additionally, Iran's ability to reach energy independence is questioned, given its limited uranium. Moreover, Bruno Tertrais has also drawn a parallel between the Iranian discourse on enrichment and that of Pakistan in the 1990s, pointing out that both are shaped around the notion of 'technological progress' and 'national independence'.⁴³ Such claims, however, do not take into account the complexity of the two narratives. The Iranian narrative, as discussed in this chapter, is based on the fundamental prohibition of nuclear weapons in Islam and the country's compliance with its international obligations, supporting its claims that its nuclear programme is merely peaceful. What is more, Iran argues that nuclear weapons are not a source of pride.⁴⁴

Reactors

⁴² 'Fordow Fuel Enrichment Plant'. *Nuclear Threat Initiative*.

⁴³ Tertrais, Bruno (2007), 37

⁴⁴ 'Statements in the meeting with nuclear scientists'. 22-02-2012.

⁴⁴ 'Bayanat dar jam-e zaeran-e hazrat-e Imam Reza'

The TRR is a 5 MWt pool-type light water research reactor, capable of producing up to six hundred grammes of plutonium annually.⁴⁵ The reactor was initially designed to run on HEU fuel but was converted to LEU by Argentina's Applied Research Institute in the late 1980s and early 1990s.⁴⁶ This period is also the source of some controversy surrounding the Iranian nuclear programme at the Reactor, as undeclared experiments with irradiated fuel pellets were conducted at TRR in that timeframe.

[These included] sintered UO₂ pellets prepared at ENTC using depleted uranium that had been exempted from safeguards in 1978. The capsules containing the pellets had been irradiated in TRR in connection with a project to produce fission product isotopes of molybdenum, iodine and xenon.⁴⁷

In August 2008, Iran began the construction of the IR-40 heavy water reactor in Arak, with a declared power of 40 MWt, which was due to achieve criticality in 2013. This HWR was planned to replace the aging TRR.⁴⁸ If operated efficiently, IR-40 is estimated to be capable of producing nine kg of plutonium annually, enough for one-and-a-half nuclear weapons.⁴⁹ During the negotiations between the EU3+3 and Iran,⁵⁰ the west argued that Tehran should convert Arak to a light water reactor. The proposal was, however, rejected by Iran. This, Zarif argued is due to the fact that Iran does not have LWR technology. 'We would have to rely on others for it and we can't rely on others.'⁵¹ To be able to use the plutonium produced in Arak in a nuclear weapon, Iran would need to separate the plutonium from irradiated fuel. To do so, it would need to develop a reprocessing capability. Tehran asserts that it does not have any plans for reprocessing.⁵²

⁴⁵ 'Tehran Research Reactor (TRR)'. Nuclear Threat Initiative.

⁴⁶ Walrond, Christina. 'Timeline 1967-1993: Argentine Low-Enriched Uranium at Tehran Research Reactor'. Institute for Science and International Security. 7-10-2009.

⁴⁷ 'Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran'. GOV/2003/75. Para. 27. International Atomic Energy Agency (IAEA). 10/11-2003.

⁴⁸ 'Communication dated 2 March 2007 from the Permanent Mission of the Islamic Republic of Iran to the Agency concerning the Nuclear Activities of Iran', INFCIRC/696, 6-03-2007

⁴⁹ Albright, David. Brannan, Paul. 'Arak Heavy Water Reactor Construction Progressing'. The Institute for Science and International Security. 13-11-2008.

⁵⁰ The EU3+3 (or P5+1) -- China, France, Germany, the Russian Federation, the United Kingdom, and the United States -- is the negotiating party to Iran, trying to strike a deal to scale back Tehran's nuclear programme. It reached an interim deal, materialised in the Joint Plan of Action (JPOA) in November 2013.

⁵¹ INT006SNT

⁵² *Ibid.*

Nuclear power plants

The construction of the Middle East's first nuclear power plant in Bushehr started in 1975. After the revolution, construction at BNPP ceased and the facility was bombed a number of times during the Iran-Iraq War. Construction resumed after the war and it has been an ongoing project since. Two key issues have surrounded the plant's construction. First, from a nuclear safety perspective, the plant is a source of concern. Indeed, according to Etemad, the modifications made in Bushehr since the revolution are the source of these problems: 'The Russians have modified the structure of the reactor, especially in the basement, which we had calculated to withstand 7.5 Richter magnitude earthquakes. I think this can have affected the infrastructure.' Hence, Etemad expresses his concern over the safety of the reactor: 'I can't say I am a hundred-percent sure of Bushehr's safety. The Russians don't have a safety culture and the Iranians just don't get it.'⁵³ Reports of cracks found in the facility's walls following an earthquake in 2013 added to these concerns. Second, Bushehr's need for enriched uranium beyond that used by the TRR has been questioned. What is more, Russia is responsible for providing the plant with fuel and operating it until 2021, before handing it to Iran.

Other contentious facilities

Lastly, the Parchin Military Complex, subordinate to the Defence Industries Organisation, is another key area of controversy in Iran's nuclear programme. Allegations of secret experiments conducted in the complex by Iran were made in 2004, according to which, Tehran tested 'high explosive shaped charges with inert core of depleted uranium'.⁵⁴ The IAEA inspected the site in 2005, without finding traces of any 'unusual activities' or indications of 'the presence of nuclear material' in the environmental samples.⁵⁵ Yet, allegations of covert weaponisation at Parchin continue to persist, especially in light of the presumed construction of an underground tunnel system. According to Iran, the secrecy around the site is due to the fact that it is a conventional military base.⁵⁶

⁵³ INT001SNT

⁵⁴ 'Parchin Military Complex'. Nuclear Threat Initiative.

⁵⁵ 'Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran'. GOV/2006/15. Para. 32. International Atomic Energy Agency (IAEA). 27-02-2006.

⁵⁶ Dahl, Fredrik, 'What could U.N. sleuth unearth at Iran's Parchin base?' Reuters. 1-05-2013.

Missile programme

A key dimension of Iran's military endeavours, widely seen as evidence of the military aspect of the country's nuclear programme, lies in Tehran's ballistic missile programme. Iran has the largest and one of the most sophisticated missile programmes in the Middle East.⁵⁷ The country has procured infamous Soviet Scud-B and Scud-C missiles and developed the Shahab line, including the single-stage liquid-fuel Shahab-3, identical to the North Korean Nodong missile, with a range of 1,000 km, which was tested in 1998 and became operational in July 2003.⁵⁸ Following that the country test-fired the Ghadr-1 with a range of 1,600 km in 2004.⁵⁹ 2008 marked Iran's successful testing of the Sejil, a two-stage, solid-propellant 2,000 km medium-range ballistic missile (MRBM).⁶⁰

Summary

Iran's nuclear programme has become a key project for the nation and the regime, with high political, economic, and security costs in the past decade. These costs include backbreaking sanctions, political isolation, and the threat of military escalation. The project, which was once denounced as an imperialist endeavour of the west's puppet, the Shah, now transcends politics in Iran. The programme was established over four decades ago, as part of the modernisation efforts undertaken by the Shah, who believed that his country needed to have an alternative to fossil fuel. However, the Shah's plans were not limited to fuel production, rather covering other energy sources. For instance, plans for Bushehr included a desalination plant next to the power plant.⁶¹ He also envisioned Iran as a key regional power and perhaps, a threshold state. He was aware of the security concerns of the country and sought to reinstate the Persian Empire's lost glory and power. As such, prestige and national security models were key drivers in his nuclear ambitions. After the Islamic Revolution, there was a lack of consensus around the nature, usefulness, and future of the nuclear programme. Many of the revolutionaries opposed the programme. Consequently, they suspended the programme, before resuming it a few years later. Iran's experience during the Iran-Iraq War played a

⁵⁷ Clapper, James R. (2014), 6

⁵⁸ 'Iran Country Profile'. Nuclear Threat Initiative.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ INT008SNT

key role in shaping its security concerns and attitude toward international law and institutions in the decades to follow, shaping its nuclear narrative. Despite a decade of backbreaking sanctions, political isolation, and threat of military escalation, Tehran has pursued its nuclear programme, including the development of its most controversial element: the front of the nuclear fuel cycle (enrichment). Iran's plans for the near future include the construction of 'seven or eight reactors' and 'to have a water desalination plant next to each reactor.'⁶² Etemad does not believe this goal to be realistic.⁶³ Concerns over Iran's programme continue to shape regional and international security debates. They stem from Tehran's controversial foreign policy and rhetoric, combined with its missile programme and the revelation of key nuclear facilities by actors outside the regime, as well as the mismatch between the vocalised nuclear ambitions and the country's actual capability to utilise the technology it is acquiring.

The following sections discuss the complex dynamics between national identity and religion in Iran, before dissecting Tehran's nuclear narrative as fashioned around these two key ideas.

Islam, nationalism, and political culture in Iran

The following sections provide the context for understanding the Iranian nuclear ambitions and narrative. They first offer a brief survey of nationhood and nationalism, including the dynamics between nationalism and religion, in Iran, before discussing Islamic governance since 1979.

Nationhood and nationalism in Iran

Understanding nationhood and nationalism in Iran is vital to any discussion around its politics, nuclear or otherwise, as it has shaped the rapport between the Islamic Republic and the nation. The relationship between Iran's pre-Islamic heritage and post-Islamic culture has shaped the Iranian nuclear narrative, leading to the emergence of its two key strands: the nationalist and Islamic nuclear discourses. The former has been used to assert the country's 'inalienable right' to pursue a peaceful nuclear programme, while the latter has been used to stress the peacefulness of it.

⁶² INT006SNT

⁶³ INT001SNT

In order to understand nationhood in Iran, one must go beyond generalisations regarding the idea of nationalism in the non-western world. Many scholars base their theories of nationalism on an east-west dichotomy, which does not take into account the specificities and diversity of either the 'west' or the 'east'. The latter, they argue, sees the idea of nation as 'a political unit centering around the irrational pre-civilized folk concept.' Therefore, 'non-western' nationhood 'found its rallying point in the folk community, elevating it to the dignity of an ideal or a mystery'.⁶⁴ While such theories can be held as true in the case of some non-western countries they are not applicable to Iran.

Unlike Pakistan, Iranian national identity is not based on religion. Instead, 'there are many different emphases in Iranian nationalism, including linguistic, territorial, ethnic, and religious.'⁶⁵ A key concept in Iranian nationhood lies in the cohabitation of different ethnicities under the reign of the Emperor (*Shāhanshāh*).⁶⁶ Hence, the king reigned a territory composed of 'different peoples with different traditions and languages,' part of a 'single nation'.⁶⁷ Therefore, kingship was seen as an institution that guaranteed a 'lasting unity' and the defence of the people's 'interests' by defending its right to decision-making. This is referred to as the Persianate (*Iranshahri*) conception of kingship, which through a 'just reign' transformed 'an unstable balance of peoples to the lasting "nation"'.⁶⁸

The idea that nationalist sentiments in the Muslim world only exist in their relationship to the west is not applicable to the case of Iran. Indeed, according to some nationalism scholars, 'nationalist sentiments often originated in the confrontation with the European powers in the nineteenth century and subsequently', and were viewed as a confrontation

⁶⁴ Kaldor, Mary (2004). 'Nationalism and Globalisation.' *Nation and Nationalism*. ASEN. Vol. 10 (1/2). PP.161-177. 164

⁶⁵ Kashani-Sabet, Firouzeh, 'Cultures of Iranianness: The Evolving Polemic of Iranian Nationalism', in Keddie, Nikki and Matthee, Rudolph (2002), *Iran and the Surrounding World: Interactions in Culture and Cultural Politics*. Seattle: Washington University Press. P. 162

⁶⁶ The notion of *shāhanshāhi* (literally, king of kings, or emperor) was revived after the Arab invasion; 'dynasties started to arrogate to themselves titles and styles reminiscent of the Sasanian past such as the ancient Iranian title of *shāhanshāh*.' It helped maintain the continuity of the Iranian governance, thus preserving Iran's cultural exception and political independence in the region despite being invaded a number of times.'

Peacock, A.C.S., in Herzig, Edmund, and Stewart, Sarah (2012), *Early Islamic Iran – The Idea of Iran – Volume V*. London: I.B. Tauris. P. 60 and P. 70

⁶⁷ Tabatabai, Javad (2010), 143

Persian kingship was revived after the Arab conquest by the Buyid dynasty and, specifically, Azad al-Dowleh.

Mottahedeh, Roy Parviz, in Boroujerdi, Mehrzad (2013), 153

⁶⁸ Tabatabai, Javad (2010), 143/158-159

between 'religious communities', namely Islam and Christendom.⁶⁹ This generalisation is often based on the assumption that the 'Muslim world' is a single, coherent entity. Hence, this approach fails to take into consideration the country's distinctive legacy, which has shaped its national identity. As discussed in the previous chapter, this idea holds true in the case of Pakistan, which was a product of decolonisation, but not Iran, which was never formally colonised and, as noted above, established over the course of centuries and defined from within rather than by external forces. Such statements are a manifestation of, and have contributed to, the poor understanding of Iran in the west, as they fail to take into account the country's culture and history, beyond post-Islamic Revolution, and its particularities demarking it from many of its neighbours.

Iranian nationalism is key to understanding the country's domestic politics and foreign policy. Indeed, 'the most contentious and least enduring aspects of Iranian nationalism have occurred in the sociocultural sphere, whereas the most persistent themes have concerned the nation's territorial integrity.'⁷⁰ Nationalism serves as a vehicle effectively to oppose the values and policies of the Islamic Republic. Despite much effort by the Islamic Republic to replace this national identity with a religious one, the regime itself has had to adjust its positions and rhetoric to reflect this nationalism. Hence, 'the clerical regime has thus far proven less effective in implementing Islam as a vehicle to resolve the mounting social, economic and political problems that led to the revolution in the first place.'⁷¹

The country's contemporary political culture is, therefore, the result of this blend of two traditions. On the one hand, Islam, particularly Shiite Islam, is not only the official religion of the country, governing every aspect of Iranian citizens' lives, both public and private; it is also a faith to which many Iranians continue to adhere. Shiite Islam is further an inherent part of Iranian national identity: It serves to differentiate Iran from its neighbours for Iranians.⁷² On the other hand, Iranian culture, stripped of its Islamic component, continues to have a great influence on the lifestyle and outlook of most Iranians, and religious and secular Iranians alike seek its ideals. This is not to say that the continuity of Iranian identity is total and unbroken. Instead, elements of modern Iranian identity find their roots in pre-Islamic Persia but Iranians today do not

⁶⁹ Zubaida, Sami (2004), 'Islam and nationalism: continuities and contradictions', *Nations and Nationalism*, Vol.10, No.4, pp.407-420.

⁷⁰ Kashani-Sabet, Firouzeh (2002), 162

⁷¹ Menashri, David (1997), 2

⁷² Kashani-Sabet, Firouzeh (2002), P. 163

understand themselves as their ancestors did. The modernising state, especially under the Pahlavi dynasty, created an educational system and standardised grammar to instil a homogenous and all encompassing understanding of what it means to be 'Iranian'. This endeavour has been very successful and, as will be discussed, plays a great role in shaping Iran's nuclear narrative by both the Pahlavi and Islamic Republic. It projected this notion back into history through history books, modern nationalist archaeology... This complicated cohabitation of pre-Islamic and Islamic traditions manifests itself in the complexity of the Iranian situation, its government, the relationship of the people with the governing bodies and, by extension, the country's nuclear programme. As discussed in the present chapter, the nuclear narrative is shaped by this dichotomy, and the response of the population to this rhetoric also illustrates these dynamics within Iranian society. Moreover, the nuclear programme, as part of a larger narrative of scientific and technological progress, fits into this understanding of the Iranian identity, as highlighted, and, to some extent, adopted, by the Islamic Republic. This is while the country was behind other countries on a number of fronts, such as the 'development of modern socio-economic factors, including a national infrastructure, industry, major urbanization, and large-scale trade'. This in turn meant that the country did not undergo developments that in other countries 'accompanied the development of a national market and other ties among different parts of bordered nations. This meant that modern nationalism appeared later in Iran than in many other countries'. Nevertheless, 'once it developed it soon spread to be passionately believed in by many in all strata of the population, however much its forms differed in different periods'.⁷³

It is further important to note that 'the major transformations of the Iranian revolution occurred not in 1978-1979 but with the coming of age of a new generation of Iranians who were not even born at the time of the revolution.' These 'include a greater sense of autonomy for both women and men and the emergence of a public sphere in which politics and religion are subtly intertwined, and not always in ways anticipated by Iran's formal religious leaders.'⁷⁴ Instead, in some instances, it seems to be contrary to what the revolutionaries had envisioned when they established the new regime.

Indeed, while the Iranian revolutionaries saw their cause as a universal Islamic revolution for the worldwide *ummah*, Iranian identity had a major influence on the

⁷³ *Ibid.*

⁷⁴ Eickelman in Rubin, Barry (2003), *Revolutionaries and Reformers – Contemporary Islamist Movements in the Middle East*. Albany, NY: State University of New York Press. 204

Islamic government. Although religious discourse has always been paramount, the revolutionaries realised that by ‘sanctifying the nation’, the revolution would have ‘greater ideological potential’, leading to a particular — if subtle — form of ‘Iranian Islam’.⁷⁵ Khomeini himself embodied this as the new Islamic constitution was written, agreeing with those arguing for Iranian nationality as a requirement for the president. He also took broader steps to appeal to democrats and nationalists through populism, by confirming the right of women to vote and stating that, ‘the affairs of the country must be administered on the basis of public opinion expressed by means of election.’⁷⁶ Thus, the process of politicisation and nationalisation that came with running a complex modern state resulted in contradictory tensions within the Islamic government that continue to affect politics and public discourse today.

Those tensions came to a boil under President Mahmoud Ahmadinejad, who broke precedent on emphasising Iranian nationalism and pushed back on the power of the Islamic clergy. Although known in the west for his vitriolic religious rhetoric, Ahmadinejad was able to synthesise ‘Iranian-ness with his brand of radical Islam’, essentially ‘sacralising the Iranian nation to the point of portraying Iranians as a “chosen people”’.⁷⁷ Ahmadinejad went so far as to publicly praise the achievements of Persia’s founding father, Cyrus the Great, and to invite 20 heads of state to celebrate Nowruz, the Iranian New Year celebration – symbols of Iran’s pre-Islamic history that had previously been derided by key clerics in government.⁷⁸

It has been suggested that Ahmadinejad’s strong nationalist appeals were at least in part a reaction to growing Iranian dissatisfaction with the economic hardship and heavy handed tactics faced under the Islamic government, ironically including Ahmadinejad’s own re-election in 2009, widely suspected of being rigged.⁷⁹ Sensing this public sentiment, Ahmadinejad turned away from the Islamic establishment and used nationalism as a tool to unify Iranian society and restore his own political legitimacy. His efforts at a particularly Iranian form of Islam seem to have backfired on his political ambitions—he has been effectively ‘excommunicated from the political elite’ in Iran and Khamenei has openly speculated about abolishing the office of the presidency

⁷⁵ Ansari, Ali (2006), *Iran, Islam, and Democracy: The Politics of Managing Change*. London, UK: Chatham House. 45.

⁷⁶ *Ibid.*, 47.

⁷⁷ Ansari, Ali (2007), *Iran Under Ahmadinejad: The politics of confrontation*. Oxon, OX: Routledge. 44.

⁷⁸ Milani, Abbas. ‘Is Ahmadinejad Islamic enough for Iran?’ *Foreign Policy*. 29-04-2011.

⁷⁹ *Ibid.*; see also Abadi, Cameron. ‘The Unpopular Populist’. *New Republic*. 3-06-2013.

altogether.⁸⁰ However, his presidency did reinvigorate Iranian nationalism as an alternative to Islamic narratives as the basis for policy decisions, bringing the complex dynamic between religion and nation back to the forefront of Iranian society and political realities. Moreover, the nationalist and religious components of the nuclear narrative developed during the Ahmadinejad years continue to shape the Iranian nuclear narrative. These components were inherited by the Rouhani government and used to ornate the Iranian nuclear negotiating team's narrative during the diplomatic process, serving Tehran's posture abroad and helping it sell the process and deal at home.

Islamic governance since 1979

As stated previously, Khomeini's aim was completely to reshape Iranian identity.⁸¹ His 'doctrine was a departure from Islamic theory and practice of recent centuries and thus, in ideological terms, represented a revolution in modern Islamic thought no less than an Islamic revolution.'⁸² Yet, as demonstrated in this chapter, the Shah had planted the seeds of much of the Islamic Republic's narrative, and arguably, some of its policies. Indeed, as explained by Ali Ansari,

1963⁸³ did mark the beginning of the Islamic Revolutionary movement, but the prime mover in this reinfusion of the religious and revolutionary thought into the political culture of Iran was not Ayatollah Khomeini but the Shah himself. It was the Shah [...] who introduced the notion of religious, empathetic monarchy, limited not by legal, or constitutional procedure, but by some vague spiritual ethic which situated the monarch as the lynchpin of the chain connecting the Iranian people to the Divine, arguably identified in the oath, *Khoda, Shah, Mihan* (God, King, and Country).⁸⁴

In fact, the Shah viewed Shiite Islam as a useful tool against what he believed to be the 'true' threat: Communism. To this end, 'the Shah's government [promoted] the concept of continuous revolution, [seeking] to mobilise people in a *basij*, encourag[ing] the description of Iranian servicemen killed in actions as "martyrs", and increasingly identif[ying] Iran as a regional power'. Likewise, he 'encouraged the development of an extensive religious network, financed sections of the *ulema*, and alternatively promoted

⁸⁰ Abadi, Cameron. 'The Unpopular Populist'. *New Republic*. 3-06-2013.

⁸¹ In Khomeini's words: 'nation and nationality is nonsense in Islam and is against Islam. One of the things that the designers of Imperialism and their agents have promoted is the idea of nation and nationality.'

Mehregan, Volume 12, Numbers 1 & 2, Spring & Summer 2003, p 16

⁸² Menashri, David (1997), xiii

⁸³ The 1963 White Revolution was a reformation process undertaken by the Shah, strongly criticised by Ayatollah Khomeini, especially because it led to women's suffrage and land reforms.

⁸⁴ Ansari, Ali (2012), *The Politics of Nationalism in Modern Iran*. Cambridge, Cambridge University Press. P. 180.

and tolerated religious thinkers'.⁸⁵ In this sense, the Shah's vision of the monarchy was closer to the supreme leadership established by Khomeini, than that envisioned by the Constitutionalists.⁸⁶ As discussed in the following sections, the pre- and post-revolution nuclear narratives also overlap extensively.

This section provides a survey of the Islamic Republic's political and legal structure, as relevant to the nuclear debate. By doing so, it attempts to offer the legal and political framework established by Ayatollah Khomeini. The broader politico-legal framework of Iran governs its nuclear programme and narrative.

The Constitution

The Constitution of the Islamic Republic of Iran has evolved and has been amended since its first draft, produced shortly after regime change, in 1979 and ratified in 1982. This amendment (*bāzbīnī-e ghānoon-e asāsi*) occurred following Ayatollah Khomeini's death and Khamenei's accession to power in 1989 and entailed a different future for decision-making in Iran. The first key change in the new Constitution was the inclusion of the notion of the absolute rule or supreme leadership (*velāyat-e motlaghe*). Indeed, under the first version of the Islamic Republic's Constitution, supreme leadership was not yet absolute. The second change was the removal of the requirement of *marja'īyat* for the supreme leader. As discussed in Chapter Three, this meant that the supreme leader no longer had to be a prominent cleric, but could be a mere 'religio-politician', which is the case of Khamenei. The notion of supreme leadership and its implementation in the Islamic Republic is assessed in greater detail in the next section. The following paragraphs provide a brief overview of the 1989 amended Constitution.⁸⁷

The Preamble to the Constitution clearly indicates the Islamic Republic's values and ideology. Its opening sentence highlights two trends, which have played a key role in shaping the country's domestic and foreign policies, and consequently its nuclear narrative. It establishes that the various institutions shall be 'based on Islamic principles and norms, which represent an honest aspiration of the Islamic Ummah'.⁸⁸ First, the omnipresence of Islamic law and its governance of all societal matters are made clear.

⁸⁵ *Ibid.* 181

⁸⁶ *Ibid.* 172

⁸⁷ 'The Constitution of the Islamic Republic of Iran' (1979), amended 28 July 1989.

⁸⁸ *Ibid.*, Preamble.

Second, the importance of the *ummah* in the regime's ideology is evident. The following sentence strengthens this idea: 'This aspiration was exemplified by the nature of the great Islamic Revolution of Iran, and by the course of the Muslim people's struggle, from its beginning until victory, as reflected in the decisive and forceful calls raised by all segments of the populations.' Therefore, while the preamble of a nation's Constitution generally highlights the idea of nationhood, the Islamic Republic's Constitution places emphasis on the notion of the *ummah*. Furthermore, the Iranian nation is defined as 'the Muslim people of Iran,' thus separating non-Muslim citizens. Hence, the idea of citizenship is clearly secondary to religion, as the nation is secondary to the *ummah*.

Perhaps the single most important manifestation of the regime's ideology and approach to foreign affairs can be found in the following paragraph, which defines the Islamic Republic's stance on the *ummah* by supporting this view through a Qur'anic verse.

In the development of international relations, the Constitution will strive with other Islamic and popular movements to prepare the way for the formation of a single world community (in accordance with the Koranic verse "*This your community is a single community, and I am your Lord, so worship Me*" [21:92]), and to assure the continuation of the struggle for the liberation of all deprived and oppressed peoples in the world.⁸⁹

This idea has helped fashion Tehran's foreign policy narrative, especially the view of the west and Israel as the 'enemy', as having prevented the creation of this single, united community. It also serves to justify Iran's support of HAMAS and Hezbollah. It has further provided the basis for the Iranian leadership's projection of its nuclear programme as a source of pride, not just for Iranians, but also for the entire community. As discussed throughout this chapter, this has become increasingly rhetorical, as, the Islamic Republic's strategic calculations have been pragmatic rather than driven by ideology for the most part. Likewise, the basis for the opposition to the west and its values, which is assessed in detail in this chapter, also manifests itself in the Constitution.

In strengthening the foundations of the economy, the fundamental consideration will be fulfilment of the material needs of man in the course of his overall growth and development. This principle contrasts with other economic systems, where the aim is concentration and accumulation of wealth and maximization of profit.

⁸⁹ *Ibid.*, Article 11

As noted in the Islamic legal chapter, the *Qur'an* (8:60) invites believers to be prepared to fight and deter the enemy of Allah. This idea is reflected in the Constitution, where this verse is quoted.

The Army of the Islamic Republic of Iran and the Islamic Revolutionary Guards Corps are to be organized in conformity with this goal, and they will be responsible not only for guarding and preserving the frontiers of the country, but also for fulfilling the ideological mission of jihad in God's way; that is, extending the sovereignty of God's law throughout the world (this is in accordance with the Koranic verse "*Prepare against them whatever force you are able to muster, and strings of horses, striking fear into the enemy of God and your enemy, and others besides them*" [8:60]).⁹⁰

Article 109 of the Constitution defines the required qualifications of the supreme leader as: 'scholarship', 'justice and piety', as well as, 'right political and social perspicacity, prudence, courage, administrative facilities, and adequate capability for leadership.'

Supreme leadership and raison d'État

The idea of supreme leadership (*velāyat-e faghīh*) has gone through two stages of inception and development, leading to the existence of two theories. The first can be found in Khomeini's early writings, where he promoted the rule of *shari'a*. At that time, he only tasked the supreme leader with implementing the Will of God. The theory's second stage of development saw the supreme leader gain the status of the absolute leader (*solutus legibus*), not bound by law. This development took place during the revision of the Constitution. It is at this stage of the evolution of the Islamic Republic's theoretical foundation that the notion of *raison d'État* (*maslahat-e nezām*) expanded the scope of the supreme leader's power, a notion that is contradictory to the original idea of the supreme leader.

Raison d'État has become central in the Iranian nuclear debate. The term *maslahah* 'is usually translated as "welfare," "public interest or utility," and "common good" in various contexts.' The concept was considered a 'primarily judicial term' in pre-modern Islamic thought. *Maslahah* is foreign to the traditional Shiite school of thought and was adopted by Khomeini, who formulated the notion for the preservation, at all costs, of the Islamic state. This idea should not be confused with that of *maslahah*, which was incepted in the Sunni school and developed by the prominent medieval Sunni thinker,

⁹⁰ *Ibid.*, Article 151

Ghazali.⁹¹ *Maslahah* is the notion of the ‘interest of the community’ as a criterion in the interpretation of *shari’a*. Hence, in the Sunni doctrine, ‘*Maslahah* is the legal principle of the consideration of public interest or public welfare in interpreting Islamic law.’⁹²

[In its traditional sense, *maslahah*] declares that when there is a choice among several possible interpretations of the Quran or Sunna on a particular point of jurisprudence the jurist should proceed according to a descending ladder of priorities: first, necessities (*daruriyyat*), then needs (*hajiyyat*), and finally improvements (*tahsinat*).⁹³

The notion as developed by Khomeini, is similar to that of *raison d’État* (of which the roots are examined in Chapter Two). Yet, the concept of *raison d’État* in its modern, abstract sense does not exist in Islamic theory. This thesis argues that the notion of *maslahat-e nezām* would be considered as *bīd’ah* or ‘reprehensible innovation’ in the traditional understanding of the Shiite philosophy. Indeed, while nothing is supposed to trump religious principles in Islam, according to this theory, political reasons can undermine the faith’s core principles. Nevertheless, this new conception of supreme leadership also resulted in a new development, which would see great sins as *wājib* in the case of the preservation of the Islamic state, including lying, espionage, and even the consumption of alcohol.⁹⁴ Hence, the Constitution provides the supreme leader with tools to transcend *shari’a* itself when divine prescriptions go against regime interests. These tools include the very notion of supreme leadership and the absolute ruler’s ability to suspend any right or duty, be it ethical, legal, or even one of the pillars of the faith, should the very existence of the Islamic state be at risk. *Maslahat-e nezām* constitutes a crucial foundation of the Islamic state *à l’iranienne*.⁹⁵ If regime interests are threatened, the supreme leader – whose ultimate goal is to ensure the preservation of the Islamic state – has the ability to overrule any religious decree, including explicit Qura’nic verses temporarily. This is even the case of the *usūl al-dīn*, or the very foundations of the faith, including the *hajj* and prayer – in order to safeguard the regime. This is while, in the years following the revolution, Khomeini ‘elaborated on one of the principal questions in Shi’i theology: the limits of government power.’ Later, he issued a ruling, which ‘represented another blatant retreat from his own doctrine. The authority to determine the state’s interest was thus entrusted to a mixed assembly (i.e., comprised of theologians, religio-politicians, and government officials with no Islamic

⁹¹ Afsaruddin, Asma, in Boroujerdi, Mehrzad (2013), 17

⁹² Delong-Bas, Natana (2004), 101

⁹³ *Ibid.*

⁹⁴ Khomeini, Ruhollah. *Sahife-ye Noor*: Vol. 15-116 (27/5/1360)

⁹⁵ The notion of *raison d’État* in its modern, abstract sense does not exist in Islamic theory.

training), thereby depriving the Council of Guardians of its exclusive right to approve legislation.⁹⁶

As discussed in Chapter Three, for several reasons, most prominent Iranian clerics did not support the notion of supreme leadership, neither in theory, nor in practice. First, Ayatollah Khomeini was not a leading cleric during times when a generation of outstanding Shiite clerics lived. Virtually none of these *mujtahidīn* endorsed Khomeini's new theory of Islamic leadership. In turn, the Islamic Republic side-lined the country's most prominent Shiite authorities, instead empowering 'revolutionary "religio-politicians"', many of who would not receive their status under traditional Shiite structure.

Khomeini himself often sanctioned the primacy of state interests over both revolutionary philosophy and his own Islamic doctrine, and used the coercive power of state to silence prominent theologians and others who openly opposed the government's policies.⁹⁷

Second, the notion of *velāyat-e faghīh* in traditional Shiite Islam signified a *faghīh* or an Islamic jurist who would take responsibility for one who does not have a parent or husband to take care of them. His duties did not include public affairs, which was a novelty, added by Khomeini. Prominent Shiite jurists did not view this novelty as being in accordance with Shiite principles.⁹⁸ In fact, 'Major Shi'i thinkers have even argued that having a single *marja'* (guide) "ran counter to the principles of Shi'ism.'" Hence,

the leading theologians of 1979 were either resentful of the *velayat-e faqih* concept as practiced by the ruling clerics (as was the case for Kazem Shari'atmadari, 'Abdollah Shirazi, and eventually Abul-Qasem Kho'i)⁹⁹ or distanced themselves from daily politics (as was the case with Seyyed Shihab al-Din Najafi-Mar'ashi, Mohammad Reza Golpaygani and Mohammad 'Ali Araki). Some vehemently opposed Khomeini's doctrine and were forcibly silenced, others were less vocal or acknowledged his power and gave their blessing to the facts he or his disciples established. [...] He [Khomeini] introduced new interpretations and gained support for them mainly from low-ranking clerics or religio-politicians over the heads of the senior theologians.¹⁰⁰

⁹⁶ Menashri, David (1997), 8

⁹⁷ *Ibid.*, xiii/9

⁹⁸ *Ibid.*, 9-10

⁹⁹ Grand Ayatallah Kho'i's 'position as a "source of imitation" or *marja' al-taqlid*[...] was undisputed amongst the international Shi'i community, and most considered him as the 'most learned' (*al-'alam*) of the scholarly community (*'ulamā*) [...] His work in the area of legal theory is also under-researched, partly because his conception of *ijtihād* is less overtly political in tone, but also because his scholarship is both technical and sophisticated, making few allowances to those uninitiated in the terminology of legal theory.'

Gleave, Robert, in Roberson, B.A., 'Political Aspects of Modern Shi'i Legal Discussions: Khumayni and Khu'i on *ijtihād* and *qada'*', *Shaping the Current Islamic Reformation*. London: Frank Cass. P. 98

¹⁰⁰ Menashri, David (1997), 14

Grand Ayatollah Mohammad Kazem Shariatmadari ‘opposed the inclusion of any principles relating to supreme leadership in the constitution and believed the governance of *fiqh* to be against national governance.’¹⁰¹

Third, these *mujtahidīn* did not believe in political Islam. In fact, some clerics ‘advocated the separation of religion and state’.¹⁰² Shariatmadari, for instance, opposed the very notion of an ‘Islamic Republic’, believing it to be ‘void of any legal meaning and believed the name “republic” for the regime to be enough.’ He further ‘advised Khomeini to remain in Qom and not to become involved in government.’¹⁰³ Unlike in Sunni Islam,¹⁰⁴ where regardless of who takes the power, whether just or unjust, he is considered as the leader, in Shiite Islam, only an infallible Imam can rule. Hence, before Khomeini’s access to power, the idea of an Islamic state was criticised by prominent Shiite authorities. Therefore, the Islamic Revolution did not only revolutionarise politics but also religion in Iran.

Regardless of this opposition, the Islamic Republic was established, implementing Khomeini’s second version of the theory of *velāyat-e faghīh*, giving the supreme leader the last say on all domestic and foreign policy matters.¹⁰⁵ As such, the absolute ruler’s opinion reflects that of the regime and the country’s stance on issues relating to security.

Islamic governance and nuclear weapons

The Iranian leadership has created a nuclear narrative transcending the international legal framework. By referring the international community to *shari’a*, Iranian officials show nations and decision-makers worldwide that divine law, superior to the legal system governing the conduct of states, is the framework providing them with a structure and limitations. Hence, Tehran tries to appeal to the international community by using its faith as a confidence-building measure, presented as superior, or at the very least, equal to international norms, regulations, and safeguards. To do so, nuclear

¹⁰¹ INT005SNT

¹⁰² Menashri, David (1997), 14

¹⁰³ INT005SNT

¹⁰⁴ Al-Mawardi

¹⁰⁵ ‘The most prominent theologians were not politically suited for succession [to Khomeini], and the religio-politicians lacked the proper religious credentials. To avoid a succession crisis, Khomeini and his disciples first “promoted” Ayatollah Hosein ‘Ali Montazeri to the rank of *ayatollah ‘uzma* [Grand Ayatollah] at the outset of the revolution and then officially selected him as heir apparent in 1985.’ Menashri, David (1997), 10

decision-makers ‘draw a practical landscape by referring to top documents and the guidance of the great supreme leader of the Revolution is one of the needed steps in the management of nuclear policy.’¹⁰⁶ As such, they can only operate within the limits established by the supreme leader.

In 2005, Tehran communicated for the first time to the IAEA that Khamenei had issued a *fatwā*, prohibiting the ‘production, possession, and use of nuclear weapons’.¹⁰⁷ Former Iranian negotiator, Seyyed Hossein Mousavian claims in his memoir that even though he and his peers had not been informed about detailed technical aspects of Iran’s past and present nuclear activities, they were confident that the programme was merely peaceful since the revolution. This, he claims, is because of their trust in the edict issued by Khamenei.¹⁰⁸ As discussed in Chapter Three, the scope of this prohibition was later limited to the ‘use’ of such weapons, creating some confusion in the west, mainly due to inaccurate translations, which did not highlight this shift in the leadership’s discourse.¹⁰⁹ This change could have two underlying reasons. First, Khamenei’s position may have changed in light of the growing threat of a military conflict with Israel in 2008-2013. Second, this could be related to the imprecision of the debate in Iran. Hence, if a *fatwā* was, in fact, issued by Khamenei, it no longer seems to reflect his current stance on the issue. Regardless, a series of questions remain regarding the *fatwā*.

First, whether or not such an edict was in fact issued by the absolute ruler remains debatable. This is stressed by the fact that the text of this important and so-called ‘binding’ decree has not been released, including on his very comprehensive website. Hence, the fact that what is referred to by Iranian officials as the ultimate ruling regarding the foremost issue on Tehran’s agenda raises questions. Second, while there seems to be a consensus among the Iranian ruling class and diplomats that such a decree exists, the consensus does not seem to cover the date of this important ruling. Indeed,

¹⁰⁶ ‘Stance of the great Supreme Leader of the Revolution Regarding Sanctions and the Islamic Republic of Iran’s Nuclear Diplomacy’, (2012). Tehran: Majles Research Center. 1

¹⁰⁷ ‘Communication dated 12 September 2005 from the Permanent Mission of the Islamic Republic of Iran to the Agency’ (INFCIRC/657). IAEA.org. 12-09-2005.

¹⁰⁸ Mousavian, Seyyed Hossein (2012), *The Iranian Nuclear Crisis: A Memoir*. Washington, D.C.: Carnegie Endowment for International Peace. P. 313-14

¹⁰⁹ Goldberg, Jeffrey. ‘Obama to Iran and Israel: “As President of the United States, I Don’t Bluff”’. *The Atlantic*. 2-03-2012.

Ansari, Ali 25-02-2013

various sources date the *fatwā* differently: 2003,¹¹⁰ November 2004,¹¹¹ and 2005 have been offered as possible dates.¹¹² This lack of clarity contributes to the dubiousness of the *fatwā*, as the date of a so-called key legal document regarding the most important issue in a given country's foreign policy is normally set in stone.

What is more, not only could the supreme leader overrule his own *fatwā*, but other clerics could too. As discussed previously, regime interests dictate the country's policy and the declaratory policy can be changed accordingly. Indeed, the *fatwā* seems to be an illustration of the use of Islam for political expediency. As discussed later, however, such a reversal could also become a double-edged sword, leading to the regime losing all legitimacy and credibility, further undermining regime interests, and thus being counterproductive. In the words of Mowatt-Larssen, 'if the *fatwā* is reversed that would mean that the government has not only lied to the west but also to Iranian people'.¹¹³

Understanding the discourse

As discussed previously, the legal debate is void of any political or strategic attribute, except its flexibility to be moulded into any discourse enables governments to tailor it to particular audiences for their own purposes. This quality is well understood by the Iranian leadership, which has based much of its nuclear narrative on this malleable structure. Unlike the Pakistani case, Iran's Islamic nuclear narrative is mainly legal and does not glorify nuclear weapons as a guarantor of the country or Muslim community's security and prestige. Instead, Tehran takes the opposite approach, stating that these weapons are illegal, unethical, and, indeed, inhumane. The religious basis for these claims has not been offered by the leadership, but as discussed in Chapter Three, this rationale can be found in the idea that nuclear weapons are inherently indiscriminate and, therefore, prohibited by the faith. Shiite Islam, Iranian Shiite scholars argue, categorically bans means and methods of warfare that are meant to destroy humans and the environment.¹¹⁴ This, they say, is stated in the *Qur'an* and can be found in the *ahādīth* attributed to the Prophet and the Imams. In the words of Grand Ayatollah

¹¹⁰ Kerr, Paul. 32. 'Iran's Nuclear Program: Status'. 17-10-2012. Congressional Research Service – Report for Congress.

¹¹¹ Sahimi, Mohammad (2012).

¹¹² Salehi, Ali Akbar. 'Iran: We do not want nuclear weapons'. *Washington Post*. 13-04-2012.

¹¹³ INT004SNT

¹¹⁴ INT003SNT

Montazeri, these weapons are against the *shari'a* and reason (*'aql*).¹¹⁵ According to these precedents, using poison, closing bodies of water on the adversary's camps, and burning trees were deemed illegal by the infallible models believers are to emulate. Therefore, WMD, which perform the same tasks on a wider scale, are also prohibited according to the same principles.¹¹⁶

The Islamic Republic, as a revolutionary regime, relies heavily on propaganda. Therefore, political rhetoric plays a key role in policy and has been used both domestically and internationally to promote the regime's doctrine to frustrate its adversaries. Rouhani discusses the challenging nature of the Islamic Republic's reliance on rhetoric and slogans and its applicability to the country's approach to nuclear policy in his 2011 memoir. He identifies the regime's failure to adequately distinguish between rhetoric and policy and writes: 'the problem is that we use slogans excessively'. This leads 'collective thinking [to reach] the point of no return.' This, he notes, contributes to Iran's anarchical political culture, based on 'slogans' and 'chaos'.¹¹⁷

In order to understand the Iranian nuclear narrative, as shaped under the current regime, one must first comprehend the Islamic Republic's view of the international community. This view supports a neo-colonialist 'enemy' narrative, dividing the world into those who rule and those who are ruled. This worldview is a constant framework through which the country approaches international affairs. This dichotomy is composed of a group of foes, encompassed by the former colonial powers, with the United Kingdom as their flag bearer, the world's sole superpower, the United States, and Israel, on the one hand, and the friends, which include the non-aligned movement, and, particularly, the Muslim world on the other. The following sections analyse the Iranian leadership's discourse aimed at each audience.

The Non-Aligned Movement

Iran's relations with the west suffered with the Islamic Revolution and, especially, the hostage crisis. Throughout its history, the Islamic Republic has often been isolated. This isolation has been widely criticised domestically. Hence, it has become critically

¹¹⁵ *Ibid.*

¹¹⁶ Feirahi, Davood, in Popovski, Vesselin, Reichberg, Gregory, Turner, Nicholas, (2009), 270-275

¹¹⁷ Rouhani, Hassan (2011), 66

important for Tehran to show to its domestic constituency that it does have ‘friends and allies’ throughout the world.

The NAM’s membership (120 members as of 2013) makes it into a natural audience and support system for Tehran. Under Mahmoud Ahmadinejad, an important focus of Tehran’s policies toward the non-aligned world was Latin America. Ahmadinejad’s government made substantial investments in a region geographically and culturally remote from Iran.¹¹⁸ His government found its allies in Latin American leaders and attempted to appeal to them by criticising the policies of the west and especially the United States in the region.¹¹⁹ When Washington, fearing growing Iranian influence in its ‘backyard’ began to take measures to counter Tehran,¹²⁰ Iran reacted by using its usual rhetoric. In the words of the country’s former Foreign Ministry Spokesman, Ramin Mehmanparast, ‘It is an overt intervention in Latin American affairs... that shows [the United States] are not familiar with new world relations.’ Mehmanparast further targeting Non-Aligned states, asserted that Washington ‘still lives in the Cold War era and considers Latin America as its back yard’.¹²¹ Ahmadinejad’s efforts to appeal to Latin America were not merely rhetorical. In 2010, Tehran and Sucre agreed to build a nuclear plant in Bolivia.¹²² Rouhani’s team has been less focused on Latin America, rather choosing to engage with the west, Russia and China, and Iran’s immediate neighbours, especially Arab states in the Persian Gulf.

The revolutionary discourse, which calls for independence from foreign influence and the incorporation of cultural relativity in the legal system, is popular among non-aligned states. Iran tries to champion this cause and to galvanise key, influential states within the Movement. This is especially the case within a sub-group of the NAM, the Arab states, which generally follow the Egyptian lead.¹²³ The Egyptian stance on regional security and arms control are similar to Iran’s in a sense, as the two countries are interested in Israel joining the NPT and dismantling its nuclear arsenal. This is while Tehran and Cairo’s relations have been complicated since 1979. Egypt, however, has championed the cause of the creation of a WMDFZ in the Middle East for decades. The

¹¹⁸ ‘Bolivia’s president lands in Iran’, BBC World. 1-09-2008.

¹¹⁹ ‘Iran, Bolivia united against imperialism, PressTV. 26-10-2010.

¹²⁰ ‘Obama Enacts anti-Iran Bill for the Americas’, AlJazeera, 29-12-2012.

¹²¹ ‘Iran Blasts Obama for Latin America law’, AlJazeera, 1-01-2013.

¹²² ‘No uranium plan with Iran: Bolivia’, PressTV. 1-11-2010.

¹²³ Potter, William C. with Mukhatzhanova, Gaukhar (2010), *Forecasting Nuclear Proliferation in the 21st Century*. 32

narrative surrounding the efforts to create such a zone in the region is important as Iran presents itself as the creator and flag bearer of the project along with Egypt. In order to promote this idea, the Islamic Republic, which traditionally presents itself as the antithesis of the Imperial State of Iran, stepping away from its undertakings and undermining its achievements, entitles this particular enterprise to itself. This signals the consistency of Iran's official stance on the creation of a WMDFZ in the region.

The Islamic Republic of Iran considers the use of chemical and nuclear weapons and the like a great and unforgiveable sin. We have proposed the slogan of a "Middle East free of nuclear weapons" and we stand by it. This does not mean giving up on the right to use peaceful nuclear energy and the production of nuclear fuel. The peaceful use of this energy, according to international law, is the right of all countries.¹²⁴

In this context, the very international legal system demonised in the same speech is used to give weight to the Supreme Leader's argument. This is due to the country needing to demonstrate that its actions are in accordance with international norms, in order to receive NAM's support. Indeed, while all members of the NAM can understand and relate to the international framework, fewer countries understand and value the Islamic system. What is more, even Muslim states, which could potentially be won by the Islamic legal discourse, for the most part adhere to a different sect of Islam. Furthermore, many may disagree with, or at least not fully accept, Iran's Islamic legal discourse.

The NAM's ability to influence international affairs, especially in the realm of arms control, non-proliferation, and disarmament makes it of key importance to Iran. Yet, its diversity is a challenge to Iran's Islamic nuclear discourse. Tehran's attempts to secure the entire NAM's support for its nuclear programme thanks to its legal reasoning, based on a system that is neither understandable nor relatable for its members falls short of its aspirations. However, while states have not condoned Tehran's nuclear ambitions, they have also been reluctant to 'exert pressure on Iran or condemn its violations of safeguards obligations.' The NAM does not hold a unified front regarding the issue. Most of the movement 'voted in favour of IAEA Board of Governors and UN Security Council resolutions finding Iran in non-compliance with its safeguards obligations, requesting that it suspend its enrichment and heavy-water-related activities and ultimately imposing sanctions.'¹²⁵ The war against Iraq was key in shaping the NAM position, which leads them to remain sceptical of western allegations of non-

¹²⁴ 'Statement in the Sixteenth NAM Summit'. Khamenei.ir. 30-09-2012

¹²⁵ Potter, William C. with Mukhatzhanova, Gaukhar (2010), 95

compliance. They question a view prevalent in the west, especially until the election of Rouhani in June 2013, according to which Iran's nuclear activities would not be limited to peaceful ones. The threat of military action against Iran was perceived by the NAM as yet another excuse for a military intervention to replace a hostile regime.¹²⁶ Hence, without the Iraqi precedent, the NAM would perhaps have been more willing to condemn Iran's nuclear activities. States abstaining to vote for these resolutions include Muslim states, such as Qatar, Indonesia, Libya, and Lebanon.¹²⁷ Therefore, contrary to Khamenei's claims, the NAM does not have a united stance regarding the Iranian nuclear issue:

More than one hundred non-aligned countries and more than about fifty Muslim countries that come together in the Islamic Conference and in the Non-Aligned Movement [...] the definite majority of the world, all support that nuclear energy comes out of the monopoly of a few claimant and expecting world powers and deeply praise and applaud the Iranian nation standing courageously.¹²⁸

Yet, the regime has been banking on the NAM, with which it shares many interests. Especially as Chair of the NAM (2012-2015), Iran has stressed the injustice of the international order, the bias of international law and its supporting institutions, and the failure of NWS to meet their end of the NPT bargain in initiate negotiations on nuclear disarmament. It has further stressed all countries' 'inalienable right to the nuclear fuel cycle'.¹²⁹ Indeed, as discussed in the next sections, nuclear disarmament has become the NAM's 'highest priority'.¹³⁰

Justice and the international order

The 'Annual Report on Military Power of Iran' (2012) highlights one of the key strands of the Islamic Republic's foreign policy.

Iran continues to seek to increase its stature by countering U.S. influence and expanding ties with regional actors while advocating Islamic solidarity. Iran also desires to expand

¹²⁶ *Ibid.*, 96

¹²⁷ *Ibid.*, 100

¹²⁸ Majles Research Center (2012), 17

¹²⁹ 'Golden Chapter of the History of the Non-Aligned Movement – Nuclear Fuel Cycle, the "Inalienable Right" of all countries. Compilation of NAM Statements Since 2003 on Iran's Nuclear Issue', Permanent Mission of the Islamic Republic of Iran to the United Nations and Other International Organizations in Vienna on the Occasion of the 16th Summit of the Non-Aligned Movement, Tehran, 26-31-08-2012.

¹³⁰ 'Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons – Working paper presented by the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons'. 22-04-2013-3-04-2013.

economic and security agreements with other nations, particularly members of the Nonaligned Movement in Latin America and Africa.¹³¹

NAM states have been the recipient of Iranian aid, ranging from financial support to Levant countries to the sale and transfer of ammunition to western Africa, the Great Lakes region, and Sudan during the events of Darfur, as well as political, financial, and military support of Bashar Al-Assad's government in Syria.¹³² Likewise, the NAM is one of the key target-audiences of Tehran's rhetoric. Various officials, including Iranian presidents (especially Ahmadinejad) and the supreme leader himself have tailored their discourses to this audience. In fact, one of Khamenei's key talking points lies in the idea that the international system governing international affairs, which he views as a product of western imposition on the rest, must be changed fundamentally.¹³³

As noted previously, the UNSC's failure to penalise Iraq during the Iran-Iraq War continues to haunt the Iranian psyche. As a result, Tehran views the institution as inherently unjust and unrepresentative of the current international order. The UNSC has become increasingly unpopular, especially among the non-aligned group, but also within progressive circles in the west, which see it as an anachronism. Tehran denounces the institution and its promotion of a biased approach to international governance.

The UNSC is an illogical, unjust, and completely undemocratic institution and mechanism; it is an obvious dictatorship and a used and obsolete situation, with an expiry date that has passed. It is through the abuse of this wrong mechanism that America and its allies have managed to impose their bullying disguised as noble concepts.¹³⁴

Likewise, Iran has vocalised its views on international law, which it sees as being fashioned by the west to promote its interests. As noted by Khamenei: 'They [the west] impose their interests under the name of "international law" and their dominating and illegal statements under the name of the "international community" to nations.'¹³⁵ These 'illegal statements' are the six UNSC Resolutions, the first of which, UNSCR 1696 (2006), called on Tehran to cease enrichment, paving the way for the imposition of backbreaking sanctions. Tehran has continuously denounced these resolutions as illegal and unjust. Khamenei's view of the world is one according to which a handful of

¹³¹ United States Department of Defense. 'Annual Report on Military Power of Iran'. April 2012.

¹³² 'The Distribution of Iranian Ammunition in Africa – Evidence from a Nine-Country Investigation'. London: Conflict Armament Research (2012). 17-19

¹³³ Majles Research Center (2012), 3

¹³⁴ 'Statement in the Sixteenth NAM Summit' (2012)

¹³⁵ *Ibid.*

‘arrogant’ powers dictate their will to the rest of the planet through the norms and mechanisms they have established.¹³⁶

Despite its criticism of the international legal framework, Tehran continuously tries to show that its activities are in accordance with it. This is especially the case of the NPT, which despite denouncing as an inherently biased instrument, the Iranian leadership claims conforming to. In other instances, perhaps in an attempt not to offend Russia and China, Khamenei has portrayed the United States as the only obstacle to the pursuit and implementation of justice within the UNSC: ‘every time the Security Council wanted to pass a Resolution against the Zionist regime, America has blocked it, come forward and has defended [Israel] and has not allowed it.’¹³⁷

Disarmament and the nuclear watchdog

The Islamic Republic has continuously denounced the failure of the NWS to take substantial steps toward the second pillar of the NPT: disarmament. The vast majority of NAM states (excluding India and Pakistan, which are non-NPT nuclear-armed states) are NNWS and has placed nuclear disarmament at the top of the list of the group’s priorities. This was formulated in a 2013 working paper, presented by the group to the NPT Preparatory Committee.¹³⁸ Hence, this discourse is particularly appealing to the members of the NAM. The Iranian leadership, having understood this, has emphasised its discourse on disarmament during its period chairing the NAM.

International peace and security is one of the sensitive issues of today’s world and the disarmament of catastrophic WMD, a pressing necessity and a general demand. [...] Those who stockpile their inhumane weapons in their arsenal do not have the right to consider themselves as the flag bearers of international security. This, without a doubt, will not bring them security. Today, it is with a lot of regret that it is witnessed that the countries that have the largest nuclear arsenals do not have a serious and real motivation to remove these deadly tools from their military doctrines and continue to see them as an element of dissuasion and an important factor in their political and international status. [...] Nuclear weapons are neither a guarantor of security nor a solidifier of political power, but rather a threat to both.¹³⁹

¹³⁶ ‘Statements in the meeting with nuclear scientists’ (2012)

¹³⁷ ‘Bayanat dar jam-e zaeran-e hazrat-e emam reza’, Khamenei. Ir.

¹³⁸ ‘Nuclear disarmament – working paper presented by the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons’, (NPT/CONF.2015/PC.II/WP.14) Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 22 April-3 May 2013, Geneva.

¹³⁹ ‘Statement in the Sixteenth NAM Summit’ (2012)

Tehran often describes the IAEA as an institution manipulated to promote the interests of the west: 'The IAEA is affiliated with the United Nations and was created to supervise the non-proliferation of nuclear weapons. Look at its treatment of countries, its discrimination, the influence of the political constituent in it, because force dominates it.'¹⁴⁰ The Islamic Republic's wariness of the Agency dates back to the early days of the regime's establishment, when Iran 'informed the IAEA of plans to build a reactor powered by indigenous uranium at the Isfahan Nuclear Technology Centre (with yellowcake bought from South Africa and imported in 1981). The IAEA inspected the facilities in early 1983'. Following this, it 'agreed to assist Iran in various areas', under the Technical Assistance Programme. However, pressure from the United States forced the Agency to terminate its assistance until a further review.¹⁴¹ Since, various Iranian officials have criticised the Agency for having become 'a mere tool in political power games'.¹⁴²

Therefore, Tehran accuses the west of pushing the Agency to become involved in non-technical activities. This discourse is aimed at NAM as it is based on the 'divide and conquer' strategy. The regime's depiction of international institutions as the fulfilment of 'Manifest Destiny' is essentially an attempt to show the non-aligned world that the colonial era has not ended and that the current world order is a manifestation of this. Iranian officials portray the Islamic Revolution, what it represents, and the nuclear programme as resistance against this order. As such, the Islamic legal discourse is presented to these nations as an alternative to the 'Manifest Destiny'. Hence, this alternative legal justification is destined to convince the NAM that the country's nuclear programme is indeed merely for peaceful purposes and that Islamic law is the guarantor of this fact. Consequently, if the nuclear programme does not have a military dimension, it is not because it is striving to submit to these 'western impositions' but rather because its faith prevents it from doing so.

The Islamic Republic's *raison d'être* resides in its opposition to the west and its influence. In order to be able to maintain a certain level of legitimacy, both domestically and internationally, the regime needs to justify itself by appealing to a given constituency.

¹⁴⁰ Majles Research Center (2012), 17

¹⁴¹ Patrikarakos, David (2012), 107

¹⁴² *Ibid.*, 110

NAM's ideals are still alive and standing; ideals such as anti-colonialism, political, economic, and cultural independence, non-alignment to poles of power and a united and cooperative progress in all member states. The reality of today's world is distancing itself from these ideals, but the collective will and comprehensive effort to go beyond these realities and achieve the ideals, regardless of the challenges, is a consequential source of hope.¹⁴³

Despite all these efforts, the Iranian leadership has failed to achieve its goal of securing overwhelming political support across the movement for its nuclear ambitions. At the same time, the Islamic Republic's authorities have tailored their nuclear narrative to fit this particular group to show domestic audiences that the programme may suffer from a lack of support from the west, but that its efforts are backed by the majority of the planet's population, including the NAM. At the peak of its political isolation under Ahmadinejad, Tehran's pursuit of NAM's chairmanship enabled it to show domestic and western audiences that the attempts to isolate it from the international community have been unsuccessful. It also allows them to legitimise the regime and the programme. This attempt has failed on two fronts. First, as demonstrated in this section, NAM states do not overwhelmingly support Tehran's nuclear ambitions as suggested by the Iranian narrative. Second, as will be discussed later, the majority of Iranians are scarcely concerned with NAM support, preferring to have the west's friendship. With Rouhani's election in 2013, Iran's foreign policy and discourse has changed to reflect this. Despite protests from hardliners,¹⁴⁴ Rouhani's foreign policy team has undertaken a process of *rapprochement* with the west, including the United States and the United Kingdom.

The ummah

Among the NAM states, Muslim countries hold a special place in Iran's foreign policy. The Muslim world is naturally one of the foremost audiences of the Iranian leadership's nuclear narrative, especially, the Islamic discourse. Yet, given Iran's complex relations with Muslim states, and its neighbours, in particular, Tehran's failure to secure the support of this group does not come as a surprise. This section assesses the Iranian nuclear narrative, especially the Islamic legal discourse, as relevant to the Muslim

¹⁴³ 'Statement in the Sixteenth NAM Summit' (2012)

¹⁴⁴ Balali, Mehrdad. MacLean, William. 'Iran "forever" comments on nuclear program seen as sop to hardliners'. Reuters. 11-02-2014.

world, before identifying the areas of success and failure and the cause in the case of each regional group or country.¹⁴⁵

The Gulf Cooperation Council (GCC)

The relationship between Iran and Saudi Arabia, and most other Arab states in the Persian Gulf, became more complex with the establishment of the Islamic Republic. This is due to several factors. First, the rivalry between Iran and the Arab states to its south is historical and transcends the political system in place. It is political, military, strategic, and economic in nature and stems from the Arab-Persian and Shiite-Sunni rivalries.¹⁴⁶ Second, ‘the war [with Iraq...] weakened whatever hold Iran might otherwise have had on other Muslim states’.¹⁴⁷ The mistrust between Iran and Arab states in the region amplified with the war, as the rivalry between them was no longer merely political but a real armed conflict. During the war, ‘Saudi Arabia and most of the smaller Arab monarchies of the Gulf opted to align with Iraq.’¹⁴⁸ Third, these countries leverage their threat perception of Iran exporting its values and ideals beyond its borders and its narrative to receive benefits from the west.¹⁴⁹ In the years following the revolution, this was the case to some degree. Indeed, ‘even before he came to power in Tehran, in late 1978, Khomeini appointed “representatives” to Shi’i communities of Kuwait and Bahrain.’¹⁵⁰ Following the revolution, ‘as the shah’s regime fell, a wave of Shi’i unrest swept the Arab states.’¹⁵¹ As the new regime became institutionalised, this goal was integrated into the Islamic Republic’s Constitution. This was significant because it showed the new regime’s commitment to promoting its ideology beyond its borders. Under the Shah, Iran played the role of the ‘policeman’ of the Gulf. The Gulf’s monarchies certainly ‘distrusted the shah’s regional ambitions’ but ‘they knew that he did not seek to destabilize them domestically.’ The Islamic Republic, while ‘weaker’, was ‘much more aggressive toward them politically’ and encouraged ‘domestic

¹⁴⁵ For Iran-Pakistan relations, see Chapter Five.

¹⁴⁶ Menashri, David (2000), *Post-Revolutionary Politics in Iran – Religion, Society and Power*. London: Frank Cass. P. 237

¹⁴⁷ Chubin, Shahram, in Menashri, David (1990), *The Iranian Revolution and the Muslim World*. Boulder: Westview Press. P. 73

¹⁴⁸ Gause, Gregory III (2010), *The International Relations of the Persian Gulf*. Cambridge: Cambridge University Press. P.50

¹⁴⁹ Delpech, Thérèse (2007), 31

¹⁵⁰ Gause, Gregory III (2010), 48

¹⁵¹ *Ibid.*, 47

opposition and openly proclaim[ed] that monarchy was “non-Islamic.”¹⁵² This meant that, ‘in the Gulf, as elsewhere in the Muslim world, Iran served as a catalyst for an opposition whose primary causes were indigenous factors such as the political and economic grievances of Shii minorities in Saudi Arabia, Iraq, Bahrain, and Kuwait.’¹⁵³ Menashri argues that, ‘Iran’s lack of support for the Shi’i uprising in Southern Iraq in 1991’ shows that this fear of an ideologically-driven Iran, one which wants to export its revolution, is overstated. Indeed, ‘Tehran did not come unequivocally and substantially to their aid, and with good reason: it feared that they would ultimately fail and that Iran’s support would harm its own interests – a clear sign of a preference for national interests over pure dogma.’¹⁵⁴ This has further strengthened the threat perception of the Arab states vis-à-vis Iran, which has ‘proved exaggerated’.¹⁵⁵ Nevertheless, during the Iran-Iraq War, most Arab states in the region supported Baghdad, ‘organiz[ing] the Gulf Cooperation Council (the GCC) and [throwing] their substantial support to Iraq.’¹⁵⁶

Iran’s revolutionary rhetoric has been utilised by Saudi Arabia and other Arab states in the Persian Gulf to receive security guarantees, enhance economic and commercial ties, and expand influence and alliances with western countries, especially the United States. Both Saudi Arabia and the United Arab Emirates (UAE), for instance, have concluded arms deals with the United States, receiving billions of dollars worth of weapons, cruise missiles, fighter jets, and bunker buster bombs among other weapons and military technology from American companies, some of which can be attributed to their adversarial relations with Tehran.¹⁵⁷ Hence, when an interim deal was reached between Iran and the EU3+3, Saudi Arabia, fearing the end of its alliance and privileges received from the United States, expressed concerns regarding the outcome.¹⁵⁸

Saudi Arabia’s frustration with the Iranian deal has little to do with nuclear weapons, and everything to do with insecurity [...] It comes from a profound and exaggerated fear that a nuclear deal with Iran is a prelude to an American-Iranian geopolitical agreement that in essence leaves Iran as the dominant power in Lebanon, Syria and Iraq

¹⁵² *Ibid.* 50

¹⁵³ Esposito, John (1997), 53

¹⁵⁴ ‘An analysis of Iran’s regional policies demonstrates the degree to which the regime’s actual politics have been primarily shaped by pragmatic, national interests, rather than ideological, Islamic convictions.’ Menashri, David (2000), 233

¹⁵⁵ Esposito, John (1997), 54

¹⁵⁶ *Ibid.*, 55

¹⁵⁷ Ben Solomon, Ariel. ‘Saudis, UAE to Get Bunker-Buster Bombs, Cruise Missiles in Deal Worth \$11b.’ 18-10-2013.

Shanker, Thom. ‘U.S. Arms Deal With Israel and 2 Arab Nations is Near’. 18-04-2013.

¹⁵⁸ McElroy, Damien. ‘Iran Nuclear Deal: Saudi Arabia Warns It Will Strike Out On Its Own’. 25-11-2013.

[...] the Saudis have pieced together a convincing narrative of abandonment that is causing them to lash out in unpredictable ways.¹⁵⁹

The GCC itself is divided on the Iran question, as some states, such as Oman enjoys good relations with Tehran. Nevertheless, the general stance of the GCC on Iran is one driven by rivalry and suspicion.

Turkey

Turkey and Iran have historically had a more egalitarian relationship than Iran and some of its other neighbours and continue to maintain such relations. Indeed, both countries are the succeeding states to large and influential empires and both states underwent a period of reformation in the beginning of the twentieth century. However, while that modernisation in Turkey has led to its current *laïque* governance; that of Iran was completely overturned by the 1979 Islamic Revolution. Hence, with the advent of the revolution in Iran, the two countries' politics and policies diverted from each other. Yet, 'regardless of ideological disparities and conflicting interests', both countries are too dependent on each other for economic and strategic reasons to be able to afford conflict. As such, the two countries have maintained relations 'between cooperation and competition, between tranquility and tension.'¹⁶⁰ Tehran and Ankara have a number of common economic and strategic interests, including in the areas of energy, trade, and counterterrorism.

Turkey's attitude toward the Iranian nuclear programme is shaped by four key factors. First, as noted previously, Ankara has a number of common interests with Iran and relies on its eastern neighbour for its energy needs. Second, Turkey is pursuing a nuclear energy programme of its own. Third, under Prime Minister Tayyip Erdogan, Turkey has begun to shift toward the Muslim world.¹⁶¹ These factors have led Turkey to support Iran's right to a peaceful nuclear programme, stating that there is no evidence the country is pursuing nuclear weapons, and to oppose a military intervention against its nuclear facilities.¹⁶² Fourth, Turkey is a member of NATO and enjoys cordial relations with the United States, which has pressed Ankara to enforce sanctions and has

¹⁵⁹ Baker, Aryn, 'Saudi Arabia Considers Nuclear Weapons After Iran's Geneva Deal'. *Time*. 26-11-2013.

¹⁶⁰ Menashri, David (2000), 250

¹⁶¹ 'Turkey PM: If you don't want Iran to have nukes, give yours up'. *Haaretz*. 31-11-2009.

¹⁶² Eldar, Akiva, 'West has no evidence of Iran atomic bomb program, senior Turkish diplomat says'. *Haaretz*. 13-12-2011.

attempted to show that it is complying with the sanctions.¹⁶³ Yet, Turkey has tried to maintain its ties, including in trade, with Iran and has sought alternative means of preserving them, including the gold trade. What is more, Ankara has made efforts to find a solution to the Iranian nuclear crisis by joining forces with Brazil. These efforts were, however, fruitless.

The Muslim world and Iran's nuclear programme

Despite often being depicted as a 'sectarian' actor, Tehran has in fact

been ecumenical about its support to terrorists and other violent extremists, helping out Shi'a groups (such as Hizballah and Jaysh al-Mahdi in Iraq), Sunni groups (such as Hamas, Palestinian Islamic Jihad, the Taliban in Afghanistan, and even some indirect support to al-Qa'ida itself, secular Marxists (the anti-Turkish PKK and the Popular Front for the Liberation of Palestine), Christians (Armenian guerrillas fighting the Shi'a Azeris), and others.¹⁶⁴

Nevertheless, partly due to its image as a sectarian actor, and partly for strategic, political, and cultural reasons enumerated throughout this chapter, Iran's Islamic nuclear discourse has received mixed results in the Muslim world. This is while the regime's divide and conquer strategy provides grounds for its leadership to attempt to win over regional audiences.

They made the security of our region, the security of the Persian Gulf, of Afghanistan, of Iraq, into chaos and turmoil; to counter the Islamic Republic – and of course to fill the pockets of weapon companies – they flooded the countries of the region with arms; they supported the Zionist regime without any conditions.¹⁶⁵

Such statements are directed at a regional and, predominantly, Muslim audience, blaming the lack of regional security and stability on external (i.e. western) powers. Hence, it supports the idea that these audiences should support a strong Iran, as it counters these powers and aspires to promote regional stability.

However, due to the factors underlined above, the Iranian leadership has failed to convince not only its own constituency but also the Arab world that the former rivals pursue the same goals, share the same values and interests, and can trust each other. These include a historical explanation. The Arab-Persian rivalry holds its roots in the

¹⁶³ Karadeniz, Tulay. Vilelabeitia, Ibon. 'U.S. presses Turkey to enforce sanctions on Iran'. Reuters. 21-10-10.

¹⁶⁴ Pollock, Kenneth (2013), 30

¹⁶⁵ 'Pasokh-e rahbar-e enghelab be 10 porsesh darbarez-e mobareze-ye tarikhi-e mellat-e Iran ba Amrica,' Khamenei.Ir.

Arab conquest of Persia.¹⁶⁶ Moreover, ‘revolutionary Iran saw its neighbours not as independent nation states, but, as parts of the Islamic world for which the “Islamic republic” and “Islamic revolution” had duties in mind which included what others would call “intervention.”’¹⁶⁷ Shahram Chubin’s statement does not fully capture the Iranian view of its neighbours. Indeed, it is not only revolutionary Iran that views them as ‘parts of the Islamic world’. As discussed in the section on Iranian nationalism, Iranians, regardless of political allegiance, see themselves as different from the rest of the region. They consider themselves as a continuous nation-state and countries around them as collections of tribes, which have been brought together under a modern flag by colonial powers. This is based on the fact that ‘the concept of territorial nationalism is relatively new in the Middle East.’¹⁶⁸ As discussed in the previous sections, the case of Iran is different. This has also helped shape Tehran’s view of sub-state actors as an integral part of the regional security landscape in the Middle East. This, however, does not necessarily translate into an ‘interventionist’ mind-set.¹⁶⁹ Nevertheless, this Iranian self-image does play a key role in its place in the region, as it is understood by the Arabs, who in turn do not trust Iran.

The second reason behind this mistrust lies in Iran’s official religion. Indeed, Iran is one of a few majority Shiite countries, a school of thought that many Sunnis do not even consider as Islamic. Hence, with the Islamic Republic widely publicising and emphasising its Shiite nature, pledging allegiance to the denomination, while supporting and sponsoring Shiites across the Muslim world, including in Iraq, Assad’s Syria, and the Arab states of the Persian Gulf, majority Sunni States see Iran as a threat to their domestic stability.

The third reason, which ties the two previous ones together, is a strategic one. Muslim countries, especially those located in the Middle East, have no interest in Iran progressing and expanding its sphere of influence. The *status quo* benefits many countries in the region, including all Iran’s neighbours in the Persian Gulf and Turkey. These countries increasingly gained political and economic influence in the region, after 1979, and even more so with developments stemming from the Iranian nuclear controversy and the country’s progressive alienation from the rest of the international

¹⁶⁶ Menashri, David (2000), 238

This mind-set transcends religiosity, as both secular Iranians and religious ones share this view.

¹⁶⁷ Chubin, Shahram, in Menashri, David (1990), 74

¹⁶⁸ Menashri, David (2000), 231

¹⁶⁹ *Ibid.*, 233

community 2003-2013. This is especially illustrated by Saudi Arabia's readiness to boost its oil production to meet the demands resulting from a ban on Iran's oil,¹⁷⁰ as well as Turkey's attempt to play a central role in the negotiations between the west and Tehran, through the role of the intermediary.

Iran's isolation from the international community, especially the 'great powers' has also helped its Persian Gulf neighbours in advancing their own agendas, among which lies the case of the dispute over the three islands of Greater Tunb, Lesser Tunb, and Abu Musa.¹⁷¹ In its 2012 Joint Statement, the GCC reiterated its statement rejecting the 'Iranian occupation' of the islands 'belonging' to the UAE.¹⁷² Using Tehran's increasing isolation, the GCC concluded that 'Any acts or practices implemented by Iran on the three islands will be deemed null and void and should not entail any change in legal or historic status of the Islands which confirm the right of supremacy of the United Arab Emirates over its three Islands.'¹⁷³ Furthermore, in 1980, shortly after the Islamic Revolution, the UAE brought the case before the Security Council, which ruled against the UAE.¹⁷⁴ It is not surprising that in the same document, the GCC called the Iranian nuclear programme a threat to the stability of the Persian Gulf region.

Some Arab states, including Egypt, see the Iranian nuclear issue through a regional lens, which is fashioned by Israel, thus 'fram[ing] the problem in political terms'. Hence, Egypt has raised the question of wider regional security and arms control in the context of resolutions addressing the Iranian nuclear controversy. By doing so, Egypt has undertaken to advance its goal of reaching a WMDFZ in the Middle East.¹⁷⁵ The 'Arab Spring' was welcomed by the Iranian leadership, which saw new opportunities in the popular uprisings, many of which were calling for an establishment more in line with Islamic values.¹⁷⁶

¹⁷⁰ Faucon, Benoît. Sharma, Rakesh. Lee, Se Young. *The Wall Street Journal*. 18-01-2012. 'Iran Confronts Saudis on Oil Offer',

Nakashima, Ellen. 'When Is A Cyber Attack An Act of War?' *The Washington Post*. 26-10-2012.

¹⁷¹ 'While Tehran seemed willing to soften its revolutionary slogans, it proved unwilling to compromise on issues of national interest.'

Menashri, David (2000), 242

¹⁷² 'Gulf Cooperation Council Joint Statement at 33rd Summit in Bahrain, December 2012.' *Council on Foreign Relations*. 25-12-2012.

¹⁷³ *Ibid.*

¹⁷⁴ Shelley, Fred (2013), *Nation Shapes: The Story Behind the World's Border*. Santa Barbara: ABC-CLIO, LLC. 408

¹⁷⁵ Potter, William. Mukhatzhanova, Gaukhar (2012), 105

¹⁷⁶ United States Department of Defense. 'Annual Report on Military Power of Iran'. April 2012.

Iran's relations with its western neighbour have been extremely complicated. The eight-year war between the two countries was devastating and has left a great stigma on the Iranian population, which suffered great economic and humanitarian consequences. Since the fall of the Baathist regime, however, relations between Tehran and Baghdad have resumed. What is more, many analysts, especially in the United States, view Tehran as the winner of the U.S. and U.K intervention in Iraq.¹⁷⁷

Iran continues to use a multipronged strategy in Iraq, including engagement with leaders across the political spectrum, outreach to the Iraqi populace, and continued support to Iraqi Shia militants and terrorists [...] to protect and preserve Iran's security interests, including threatening the residual U.S. presence.¹⁷⁸

Tehran's influence in Iraq has become more apparent since the advent of ISIS and Iran's ability to effectively influence Baghdad. Therefore, it is not surprising that in his statement at the General Debate of the First Committee, the Permanent Representative of Iraq to the United Nations stressed, 'the legitimate right of States to obtain nuclear technology for all peaceful purposes that serve their development project, and support their economies and the diversity of energy sources.'¹⁷⁹

Despite decades of considerable political and financial support from Tehran, the Palestinian Authority does not support Iran. In the wake of the interim deal between Tehran and the EU3+3 reached in November 2013, senior Palestinian Liberation Organization (PLO) official and chief negotiator with Israel, Saeb Erekat, issued a statement. The statement, which 'lack[ed] specificity and conviction', described the negotiations as 'a unique precedent and platform for the international community to resolve differences avoiding war and violence.' It went on to 'call upon the international community to make use of the same efforts in order to end decades of occupation and exile for the people of Palestine'. The Palestinian reluctance to welcome the news as a great success was due to two factors. First, Palestinians 'don't trust the Iranians any more than any other Middle Eastern government does.' Second, 'the Palestinians are concerned that the United States – after undertaking a huge risk in its Middle East diplomacy with regard to Iran and Israel – will have no stomach for embarking on any other project of such a magnitude'.¹⁸⁰ This in turn, they feared, would lead to a lack of

¹⁷⁷ 'So, Who Won the War in Iraq? Iran', Council on Foreign Relations, 30-08-2010.

¹⁷⁸ *Ibid.*

¹⁷⁹ 'Statement by H.E. Hamid Al Bayati, Permanent Representative of the Republic of Iraq to the United Nations, At the General Debate of the First Committee, New York, 8 to 16 October 2012'.

¹⁸⁰ 'What Iran's nuclear deal means for Palestinians: 2 Questions with GlobalPost's Jerusalem correspondent', The Global Post, 25-11-2013.

political will on Washington's part in pushing for a comprehensive peace agreement solving the Israel-Palestinian issue. Therefore, Palestinian interests are prioritised over allegiance to Iran, rendering Iran's rhetoric one-sided. Unlike Ahmadinejad, the Rouhani government has toned down the anti-Israeli rhetoric, and has been less vocal in its support for Palestine. This was especially the case during the 2014 Gaza conflict. This is illustrated by Rouhani's 2014 speech at the General Assembly's Annual Conference.¹⁸¹

Azerbaijan, with a non-Arab and majority Shiite population, sharing historical, cultural, and linguistic ties to its southern neighbour has not supported Iran's nuclear ambitions. In fact, it has allegedly facilitated the sabotage of Iran's nuclear programme by helping out Israel in the assassination of Iranian nuclear scientists.¹⁸² Several hypotheses can be put forward as to explain the Azerbaijani attitude. First, since its independence, the former Soviet territory has attempted to 'reunify' with the two north-western Iranian provinces of Eastern and Western Azerbaijan. According to Baku, these two provinces with a considerable Azeri-speaking population should be part of its territory. In an attempt to convince the Iranian Azeri population that they should join the minority separatist movement, Azerbaijan has led many campaigns, including one to rename itself, 'North Azerbaijan', thus giving the country the same status in relation to the Iranian provinces as North and South Korea. Second, these disputes are not merely territorial but also encompass some disagreements regarding the territorial waters of each country in the Caspian.¹⁸³ Third, Iran has historically had close ties with neighbouring Armenia, a rival state of Azerbaijan. Hence, 'while Iran officially adopted a neutral position and engaged in mediation, its policy was seen as amply pro-Armenian.' This is while, Armenia is a Christian country and Azerbaijan is one of very few countries to share Iran's official religion. This further provides evidence of 'Iran's self-interested national attitude' and pragmatic foreign policy, rather than one primarily driven by ideology.¹⁸⁴ Indeed, Iran is home to a number of Armenian nationals and Armenian-Iranians and a weak Azerbaijan serves its national interests. Therefore, Azerbaijan's national interest lies in a weak and isolated Iran.

¹⁸¹ Rouhani, Hassan, address to the 69th UNGA annual conference, 25-09-2014.

¹⁸² 'Eteraz-e katbi-e Iran be eghdamat-e "gheyr-e doostane-ye jomhoori-e Azarbaijan', BBC Persian, 12-02-2012.

¹⁸³ 'Iran, Azerbaijan In Tense Caspian Standoff, Cables Show', Eurasianet.org, 4-10-2011.

¹⁸⁴ Menashri, David (2000), 235

Summary

Iran's relationship with the Muslim world is very complex. On the one hand, the Islamic Republic has tried to appeal to the Muslim community since its inception. On the other hand, in many ways, and despite communicating the contrary, the regime's view of the Muslim world is not much different from the previous regime. Indeed, as argued throughout the chapter, Tehran continues to have a generally pragmatic foreign policy, one where its interests (primarily those of regime) trump revolutionary ideals. Hence, despite a pan-Islamic rhetoric, in practice Iranian foreign policy has been tailored to its particular country and situation. Likewise, different countries have responded to Iran's nuclear narrative differently. Saudi Arabia, a Muslim state governed by the *shari'a*, has repeatedly rejected Iran's claims and tries to leverage the Iranian nuclear programme to receive security guarantees from the United States. Turkey's position on the Iranian programme has been dictated by its twofold stance on international affairs, its own identify as a *laïque*, member of NATO, traditionally close to the west, and a predominantly Muslim state. This has been increasingly the case as Ankara has shifted toward the Muslim world under Erdogan. Turkey has expressed concerns over the Iranian nuclear programme and its potential military dimensions, while at the same time supporting Tehran's right to a peaceful programme, stemming from Ankara's own nuclear ambitions.

The previous chapter argued that the pan-Islamic nuclear narrative developed by Pakistan was highly successful in galvanising the support of Muslim nations. It discussed that this is due to the fact that none of those countries had conflicting interests with Islamabad, as none of them viewed it as a threat, given its perceived lack of power and influence in the region or the Muslim world. Iran, however, has a long history of regional rivalry with states in the Middle East and is viewed as a regional power. Therefore, states have responded to the Iranian nuclear narrative according to their own specific interests. For instance, as noted above, while Turkey has been reluctant to condemn Tehran given its own pursuit of nuclear energy and its energy dependence on Iran, Saudi Arabia has been very vocal in its exaggeration of the Iranian threat.

As noted previously, in addition to the NAM and the Muslim world, Tehran's nuclear narrative is also aimed at the west. The west has responded to the religious discourse, by acknowledging the supreme leader's *fatwā*, with efforts to reach a diplomatic solution to the nuclear crisis. In response, Tehran has adjusted in discourse as geared toward the

west. Yet, the enemy narrative, which is an overarching component of the revolutionary rhetoric, persists. The following section discusses this discourse, as well as the Iranian views of the international legal framework and institutions as a product of the west, bias and inefficient.

The enemy narrative

This ‘distinction of friend and foe’, referred to as the ‘enemy narrative’ in this thesis has been the central component of the Islamic regime’s ideology and discourse since its embryonic stage. It is a central element of the regime’s political system and holds the ‘arrogant powers’ of the west, with the United States, the United Kingdom, and Israel as their flagship. Yet, the narrative also holds deeper roots, which transcend the Islamic Republic, and, more generally, even Iran, and spread to the entire Middle East: conspiracy theories. Indeed, even though they exist everywhere, conspiracy theories are particularly widespread in that region.¹⁸⁵ The enemy narrative is shaped around this idea, to which even otherwise well-educated and well-adjusted individuals adhere. These conspiracy theories are popular in part because Iran has been the object of foreign conspiracies.¹⁸⁶ These conspiracy theories fall into two categories. First, particularistic theories implicate all Western powers competing for influence in the country, and are often the subject of the Islamic Republic’s enemy narrative: the United Kingdom, the United States, and to a lesser extent, Russia. Secondly, universalistic theories blame global forces, including Zionism, which is the flagship of the enemy narrative.¹⁸⁷ In addition to shaping Iranians’ views of their country and regional and international affairs, these conspiracy theories also shape their approach to the nuclear issue. Indeed, many Iranians, regardless of their political views and social status, believe that their country is being treated differently from the rest of the international community. This, they claim, is designed to keep Iran behind scientifically and to weaken it. In the Islamic Republic’s terminology, ‘the enemy’ is stopping Iran from achieving its full potential and gaining its rightful status among nations. Hence, the nuclear narrative is shaped by this idea of an enemy. German political theorist, Carl Schmitt described the role of political foes as follows:

¹⁸⁵ Chehabi, Houchang, ‘The Paranoid Style in Iranian Historiography’, in Atabaki, Touraj (2009), *Iran in the 20th Century: Historiography and Political Culture*. London: I.B. Tauris & Co. 155-56

¹⁸⁶ *Ibid.* 168

¹⁸⁷ *Ibid.* 157

As long as a people exists in the political sphere, this people must, even if only in the most extreme case-and whether this point has been reached had to be decided by it-determine by itself the distinction of friend and enemy. Therein resides the essence of its political existence. When it no longer possesses the capacity or the will to make this distinction, it ceases to exist politically.¹⁸⁸

This statement captures the essence of the Islamic Republic's enemy narrative.

The west

Even when Tehran has cordial relations with the west or is attempting to reestablish a relationship with the United States, it continues to use the 'enemy narrative'. The supreme leader, in his statement at the 2013 Conference for Islamic Unity defines the religious foundation for this animosity:

How does one adhere to the rope of God? With faith to Allah and disbelief in tyranny. Today the great tyrant in the world is the regime of the United States of America; because it is the United States that has created Zionism and confirms it. America replaces the previous great tyrant, meaning England. [...] We do not invite countries, governments, and nations to rush into a war with America, we invite them not to surrender to America.¹⁸⁹

Nevertheless, while western governments are portrayed as the bullies, the Iranian discourse describes the nations as a victim of the policy of its leadership. This is an attempt to show the public opinion in these nations, which play an important role in their decision-making process, that Tehran's animosity is not toward the nations, but rather the governments and their actions. Hence, the Iranian leadership never fails to take the opportunity to utilise international disagreements and, especially, unrest and protest movements to show its own population, but also the populations of these countries that it is these governments that are on the wrong side of history: 'This flawed and harmful situation is no longer sustainable. Everyone is tired of this wrong international geometry. The 99% movement of the American people [...] also shows that the vase of patience of these nations in this situation is overflowing.'¹⁹⁰ This idea has been reiterated a number of times in various contexts and by different Iranian officials.¹⁹¹

¹⁸⁸ Schmitt, Carl (2007), 49

¹⁸⁹ 'Pasokh-e rahbar-e enghelab be 10 porsesh darbarez-e mobareze-ye tarikhi-e mellat-e Iran ba amrica'.

¹⁹⁰ 'Statement in the Sixteenth NAM Summit'. 30-09-2012

¹⁹¹ 'Payam-e tasliyat-e Ahmadinejad be mardom-e Amrica', BBC Persian. 16-12-2012

Additionally, while the Islamic Republic's rhetoric is generally based on the idea that the enemy equals the west, without defining what the 'west' is, the supreme leader, in a rare attempt to make such a distinction asserted that:

Our people do not have a bad memory of many European countries. We do not have a bad memory of France, of Italy, of Spain. Yes, we have many bad memories from England. [...] But other European countries, no. With what they are doing, which is cooperating with America, which according to us is unwise, they are attracting the Iranian nation's animosity, they make themselves despised in the eyes of the Iranian nation.¹⁹²

Regardless, the United States, the United Kingdom, and Israel have remained a stable component of the enemy narrative. Washington and Israel are presented as inseparable by the leadership. All of Israel's policies are portrayed as endorsed by the United States.¹⁹³

Iranian officials have tried to minimise the extent of the country's isolation from the international community in their speeches. They offer two contradictory lines of reasoning. On the one hand, they claim that the sanctions regime is unjust and hurts average Iranians. On the other, they downplay their impact and claim that they are not effective. In the words of Khamenei: 'the threats, the sanctions, they impose, except for America and the Zionist regime [Israel], no one else is a beneficiary of these sanctions. They force and pressure and corner others to undertake these things.'¹⁹⁴ According to the Iranian leadership, the majority of the world's population is dominated by a few 'arrogant powers', which impose their own will on them. As such, these 'governments' want to maintain their monopoly on knowledge, in order to keep this power in their own hands, alienating the rest of the world. Iran, on the other hand, they claim, wants to make scientific and technological progress, and share it with the rest of the non-aligned world, especially the Muslim world. More generally, according to the official Iranian narrative, while the west tries to divide and conquer, Iran promotes an egalitarian understanding of international affairs.¹⁹⁵

Khamenei also criticises the west's approach to diplomacy. According to him, the west does not respect the foundations of diplomacy in its approach to the Iranian nuclear issue, not only by implementing a sanctions regime that is 'barbaric', but also by openly

¹⁹² 'Ayatollah Khamenei Speech About Sanctions and Nuclear Issues in Khorasan Province.' 10-10-2012.

¹⁹³ Bayanat dar jam-e zaeran-e hazrat-e Emam Reza'

¹⁹⁴ Majles Research Center (2012), 10

¹⁹⁵ 'Statement in the Sixteenth NAM Summit'. 30-09-2012

expressing satisfaction when the sanctions regime impacts the country's economy.¹⁹⁶

One of the talking points of the Iranian leadership is to present the Islamic Republic and the Iranian people as victims of the 'arrogant powers', which threaten their security and insult them. According to them, however, these threats and insults have not affected the Iranian nation.¹⁹⁷

Furthermore, Tehran insists that any steps taken toward nuclear disarmament and the role of the P5 in nuclear arms control are irrelevant.

The bitter irony of our time is that the American government, which possesses the deadliest and greatest number of nuclear weapons and other WMD and the only perpetrator of their use, today wants to be the flag bearer of opposition to nuclear proliferation! They and their western allies have provided the Zionist regime with nuclear weapons, creating a great threat for this sensitive region; but this very deceiving unity, does not accept the peaceful use of nuclear energy for independent countries and even opposes the production of nuclear fuel for radiomedication and other peaceful, humane purposes with all its might [...] I insist that the Islamic Republic is not pursuing nuclear weapons, and will never give up on its nation's right to peacefully use nuclear energy. Our slogan is "nuclear energy for all, nuclear weapons for no one". We will stand by both these statements and we know that breaking the monopoly of a few western states in the production of nuclear energy, in the context of the NPT, is in the interest of all independent states, among which, the member states of the Non-Aligned Movement.¹⁹⁸

With the postponement of the meeting scheduled in late 2012 to discuss the potential creation of a WMDFZ in the Middle East, Iranian officials seized the opportunity to use the enemy narrative to gain support from states in the region. The postponement was blamed on the United States and its attempt to help maintain the Israeli nuclear status.

As discussed previously, one of the strands of the Islamic Republic's nuclear narrative resides in the idea that the country's nuclear programme is in accordance with international norms and safeguards. Yet, its development of the religious legal discourse is a response to the international legal framework and its supporting institutions, which it denounces as the rule of power of the west, failing to take the values of the 'rest' into account. In this sense, the Iranian demonisation and constant undermining of international law rejects what Onora O'Neil calls a 'relativised', as opposed to an 'idealised' theory of justice. The second stresses 'the need to abstract from the particularities of persons [...] painting justice as blind to gender and nationality. Its

¹⁹⁶ 'Ayatollah Khamenei Speech About Sanctions and Nuclear Issues in Khorasan Province' (2012)

¹⁹⁷ 'Bayanat dar jam-e zaeran-e hazrat-e Emam Reza'

¹⁹⁸ 'Statement in the Sixteenth NAM Summit' (2012)

principles are those that would regulate the action of idealised “abstract individuals”¹⁹⁹. The former ‘not only acknowledge[s] the variety and differences among mankind but ground principles of justice in the discourse and traditions of actual communities’.²⁰⁰

Israel

Perhaps the paramount concern in the west, regarding Iran’s potential nuclearisation, lies in the Israeli factor. As noted previously, much Iranian political rhetoric has been focused around the opposition to the existence of the state of Israel in the past few decades. This is one of the key areas of divergence between Iranian foreign policy and narrative before and after the revolution. Indeed, the two countries had cordial relations, based on cooperation on many levels, including national and regional security.²⁰¹ Yet, Iran abstained in the second session of the General Assembly’s Special Committee on Palestine, voting on the recognition of the state of Israel in 1947.²⁰² This was due to the Shah’s recognition of the intricacies of the region and the sensitive issue of a Muslim state voting in favour of the creation of Israel, as well as the complexities of Iran’s domestic politics, with several movements evolving in parallel. Even so, Khomeini criticised the growing relations between the two countries and what he described as the increasingly affluent Iranian Jewish community’s help to Israel during the 1960-70s.²⁰³ This held its roots in the secular and nationalist approach of the Shah and his father. Hence, according to Khomeini, the Shah was helping Iranian Jews help Israel. Khomeini’s view of Iranian citizenship was drastically different from the Shah’s, as he held the Muslim faith, especially of the Shiite denomination, as a determining factor in Iranian identity and strived to substitute nationhood with the sense of belonging to the *ummah*.

¹⁹⁹ Attfield, R. Wilkins, Barry (1992), *International Justice and the Third World*. London: Routledge. 55-56

²⁰⁰ *Ibid.*, 50-51

²⁰¹ Menashri, David (2000), 261

Bialer, Uri. ‘Fuel Bridge across the Middle East—Israel, Iran, and the Eilat-Ashkelon Oil Pipeline’. In: *Israel Studies*, Vol 12, No 3 (Fall 2007)

Sciolino, Elaine. ‘Documents Detail Israeli Missile Deal with the Shah’ *The New York Times*. 1-04-1986. Last accessed 16-12-2013.

²⁰² Official Records of the Second Session of the General Assembly Supplement No. 11, United Nations Special Committee on Palestine – Report to the General assembly. 3-09-1947. (A/364).

²⁰³ Menashri, David (2000), 264/269

Sanasarian, Eliz (2000). *Religious Minorities in Iran*. Cambridge: Cambridge University Press. 46-47

After the Revolution, the complex nature of Iran and Israel's relations continued to persist, as Israel was one of few countries to stand by Iran during the Iran-Iraq War, facilitating arms deals between Tehran and Washington. The hostility between the two countries began to escalate even further after the end of the eight-year war between Iran and its western Arab neighbour and was stressed even further in the first decade of the twenty-first century, with the Iranian nuclear crisis. It is interesting to note that, while the anti-Israeli rhetoric has been viewed superior to national interests, by the leadership, during the Iran-Iraq War, regime interests trumped the anti-Zionist agenda. Indeed, Israel was one of few countries to support Iran, albeit covertly, by providing Tehran with weapons, including in the context of the Iran Contra scandal.²⁰⁴ Since then, Tehran's 'anti-Israeli stance has [further] enhanced its credentials as a major regional power and a leading Islamic state'.²⁰⁵ Hence, despite its belligerent policy and covert operations against Israel, Tehran has not escalated the conflict and maintains the status quo.²⁰⁶ Takeyh further underlines that 'the invocation of the Israeli military threat is largely rhetorical, employed by the clerical regime as a means of mobilizing regional and domestic opinion behind a range of policy initiatives.' He points out that Israel is not a driver behind Iran's nuclear ambitions and that Tehran 'has opted for a low-intensity challenge to Israel by fuelling terrorist actions against the Jewish state while avoiding direct military confrontation'.²⁰⁷ Takeyh's core argument is correct with two caveats. First, while not consistently endorsing the peace process, Iran has not opposed it. In fact, former president Khatami had told an Israeli reporter in 2004 that he favoured a peaceful solution to the Israeli-Palestinian conflict.²⁰⁸ Even his successor, Ahmadinejad, whose notoriously belligerent rhetoric was widely reflected in the west, backed the process.²⁰⁹ Second, as discussed in the section on the Iran-Iraq War, this

²⁰⁴ Hunter, Jane (1986). 'Israeli Arms Sales to Iran'. *Washington Report on Middle East Affairs*.

The United States and Iran did not have diplomatic relations during the Iran-Iraq War. In light of the Tehran U.S. embassy's hostage crisis, the United States could not legitimise supporting Iran domestically. Hence, when in 1986 light was shed on the Reagan administration's involvement in arms deals with Tehran, controversy ensued.

²⁰⁵ As 'other rejectionist states [withdrew] from the scene, as a result of strategic choice (as in the case of Syria), military defeat (Iraq), or marginality (Libya), Iran saw its leadership of the anti-Israel campaign as a means of enhancing its credentials as a major power'. What is more, 'focusing on international issues could also help do divert public attention from pressing domestic problems, to demonstrate success, to highlight Iran's regional importance and to display the regime's adherence to dogma.'

Menashri, David (2000), 281-282

²⁰⁶ Takeyh, Ray, in Clary, Christopher (2006), 53

²⁰⁷ *Ibid.*, 53-54

²⁰⁸ 'Iranian leader talks to Israeli', BBC News. 22-02-2004.

²⁰⁹ Butcher, Tim. 'Tehran backs Arab peace plan, say Saudis'. *The Telegraph*. 5-03-2007. Last accessed 15-03-2014.

evolution does not only date back to the 1990s, as Takeyh seems to claim, but rather to the 1980s and the war.

Domestic support and legitimacy

Perhaps the single most complex component of the Iranian nuclear narrative resides in the discourse aimed at domestic audiences, especially the factions of the population that do not support the regime. This is shaped around the argument that the nuclear programme is a matter of ‘national pride’, transcending political allegiance and affiliation.²¹⁰ The complexity of the issue comes from the ambivalent sentiment of the nation toward the nuclear programme. On the one hand, the programme is indeed seen as an element of national pride and the ‘obvious right’ of the nation. This is the idea promoted by the supreme leader.

Nuclear energy and nuclear technology are your obvious right, you, the Iranian nation, and no one has the right to [disregard it] If today you do not get hold of this right, the Iranian nation will go tens of years backward. No responsible individual, no follower of the great Prophet would be satisfied. The world also accepts these rights. Now, they have threatened with the Security Council, as if the Security Council was [vital]. We have also tasted the Security Council. During the imposed war, when the Iraqis had stepped a few thousand kilometres onto our land, this very Security Council issued a resolution that [Iran] must put an end to the war, do not defend or resist; because it was against the interest of our country, we did not accept it. We will not accept anything that is against the interests of our country.²¹¹

The idea that the nuclear programme is the ‘obvious right’ of the nation and consistent with its national interests is supported both by regime supporters and those fundamentally opposed to it. The programme was, after all, initiated during the Shah’s reign and has made progress in the field, in spite of the backbreaking sanctions and the virtually constant threat of a war with the world’s sole superpower in the past decade. Many believe that the nuclear programme is an investment for the country’s future. Therefore, the technological determinism driver plays a great role in shaping the country’s nuclear endeavours and nuclear narrative. Indeed, much of the leadership’s rhetoric is based on the idea that the country has made great technological progress in spite the west and Israel’s attempts to stop such achievements. Sanctions and isolation from great powers are presented as a few challenges overcome by the ‘Iranian nation’ in its pursuit of nuclear energy. Hence, even having a nuclear weapon capability would

²¹⁰ ‘Speech to Iranian nuclear scientists.’

²¹¹ Majles Research Center (2012), 4-5

allow the leadership to maintain this position and promote the idea that the country does indeed belong to the select group of nations with a nuclear weapon capability. In this sense, Stephen Meyer's argument does not hold true in the case of Iran.

Technological imperative hypotheses contend that 'governments "decide" to go nuclear because the technology is available, thereby making the technical/financial costs manageable and the opportunity irresistible.' By contrast, "motivational" hypotheses counter that "nuclear weapons do not generate spontaneously from stockpiles of fissile material". To go nuclear requires making a tough political choice, and that choice will reflect the top leadership's assessment of its likely costs and benefits.²¹²

A great number of people see the programme's price as too high and not worth the sacrifice of Iran's reputation, relations with the world's great players, and economic standing.²¹³ Hence, the economic model, as in the case of Pakistan, does not play an important role in shaping Iran's nuclear narrative, or aspirations. Because Iran is not an inward-looking system, its leadership has had to make adjustments in its policies. Rouhani's efforts reflect this idea. In light of a number of developments, the Iranian leadership has realised that it needs to take a different approach to the matter.²¹⁴ These include the growing discontent linked to the nuclear programme, and more generally, what can be called, not only the Islamic Republic's greatest crisis of legitimacy in the past thirty three years but also a major blow to the Islamic faith, resulting from the contested 2009 presidential election and its resulting unrest. One manifestation of this different approach was Rouhani's election in 2013.

Khamenei has found it essential implicitly to project the issues many Iranians view as the direct result of the Islamic Republic's policies and, by extension, the faith, on external factors. Hence, he instructs the nation not to blame the current hardship on the leadership or the religion it bases its laws and policies on, but rather on the west: 'They [the west] place sanctions in order to weaken the country economically, so they think, for others to look and say that Islam has held the country back economically.'²¹⁵ By doing so, he continues the Islamic Republic's strategy of blaming the 'enemy' for the country's crises, shifting the responsibility. However, this narrative is no longer viable. Hence, the centrepiece of the discourse has been replaced with the notion that the Islamic Revolution had made every effort to obliterate: nationalism. As discussed above, the revolution sought to replace national identity with religious identity. The

²¹² Meyer, Stephen (1984), 6-9

²¹³ 'Why Iranian public opinion is turning against the nuclear program'. *The Atlantic*. 16-03-2012.

²¹⁴ Menashri, David (2000), 227-228

²¹⁵ 'Statements in the meeting with nuclear scientists' (2012)

Imperial State of Iran's last prime minister, Shapour Bakhtiar complained following one of the biggest demonstrations of the revolution that the only Iranian flag was taken down, thus ridding it of all national symbols.²¹⁶ Yet, since the revolution, a growing number of speeches feature predominantly nationalistic themes. For this reason, Khamenei chooses to support an opposing argument to his usual talking point, according to which the 'arrogant' powers are the only ones opposing Iran's nuclear programme, revealing the inconsistency of the regime's nuclear narrative: 'Our nation has witnessed that the whole world, led by America, protested against Iran's nuclear move, argued, threatened to take military action, said we will attack, we will do everything.'²¹⁷ It is important to note that this is precisely the same line of reasoning as the west's, especially that of the United States, stating that the world is united against Iran's nuclear aspirations. Nevertheless, in an effort to gain the support of all Iranians, regardless of political affiliation, the regime has developed a discourse with the potential to gain the consensus of the nation. This is the idea of technological and scientific progress, which is inarguably in the interest of the nation. This argument is not new and, as discussed earlier in the chapter, it was already a component in the Shah's nuclear narrative. The idea of scientific and technological progress is not limited to mastering the front-end nuclear fuel cycle. Instead, the regime presents nuclear energy as part of greater development plans. Indeed, Iran has greatly invested in technology, both before and after the revolution. In that sense, it is different from Pakistan, where, as discussed in the previous chapter, the nuclear weapons programme is a standalone effort, almost developed at the expense of other sciences and technological developments. On the contrary, Iran presents its nuclear programme as a part of a greater ambition to be a modern and technologically developed country.

In the field of technology – petro chemistry, petroleum, steel, defence production and industry – the progress is amazing [...] In high technology, which is talked about in the world with pride, [the west] has been forced, despite all the animosity, to say that Iran is one of ten countries that has mastered the nuclear fuel cycle. This is not a small thing.²¹⁸

The regime insists that this progress has been made, in spite of the enemy's best efforts to stop it from such achievements.

From the womb of all sorts of sanctions, which have been forced upon the country for many years, all of a sudden a satellite of Hope [paronomasia on the name of the Omid – hope – satellite] comes out and is projected into space. From the womb of all the

²¹⁶ Bakhtiar, Shapour, speech before Iran's Senate, February 1979.

²¹⁷ Majles Research Center (2012), 14

²¹⁸ *Ibid.*, 8

concentrated efforts they have made, all of a sudden the ability to enrich uranium – which is limited and in the monopoly of the great powers and which should not go anywhere without their authorisation – grows in this country and comes to life and shows itself. This is proof that the enemy has not succeeded, its sanctions are not effective, its threat is also ineffective. Why? Because this nation has kept its firm determination, which is based on its deep faith, and moves on and goes forward and they cannot [stop it].²¹⁹

As noted previously, Khomeini considered nationalism to be ‘against Islam,’ ‘God’s prescription’, and ‘the Holy *Qur’an*.’ He viewed nationalists as nothing other than the ‘troops of Satan’ and the ‘opponents of the Holy *Qur’an*.’²²⁰ Hence, nationalism was frowned upon and symbols reminding the nation of what it saw as its past glory were to be destroyed. This was notably the case of Persepolis, the capital of the first Persian kings.²²¹ However, as discussed previously, the regime’s pan-Islamic rhetoric has not been successful, but rather counterproductive domestically. Indeed, people, and especially the youth, have used Iranian history and nationalism as a means to protest against unpopular ideals and policies. Hence, the authorities have adjusted to this and stress the nationalist element in nuclear discourse, with such ideas as ‘national pride’ and ‘technological progress’ at its core.²²² These statements serve to show the west that there is a consensus on this matter in Iran, even in the face of hardship.

Former Foreign Minister and the head of the AEOI Aliakbar Salehi attempted to make this point when he stated that, ‘we can be homogeneous and united regarding the interests of our country, even with the existence of differences that are resulted from different thoughts and with respect to each other’s votes.’ In his statement, he indirectly hinted at the 2009 elections and their contested outcome.²²³ The consensus is highlighted with the inclusion of the Iranian Diaspora, typically against the regime: ‘Even the Iranians abroad who have different opinions about the regime, emphasise the sovereign right to use peaceful nuclear energy and we hope that they also will accept the truth of the Islamic Revolution.’²²⁴ Despite sometimes questioning the way the nuclear file has been handled, often pointing fingers at the Ahmadinejad government, rather

²¹⁹ *Ibid.*, 10-11

²²⁰ *Mehregan*, Volume 12, Numbers 1 & 2, Spring & Summer 2003, p 16

²²¹ Dareini, Ali Akbar. *Los Angeles Times*. ‘Persian Icons Regain Favor in Modern Iran.’ 22-06-2003.

²²² ‘Statements in the meeting with nuclear scientists’ (2012)

²²³ Khamenei went even further during the 2013 presidential elections, by inviting ‘those who, for whatever reason, do not support the Islamic regime [but] still want to support their country’ to cast their ballot.

‘Ayatollah Khamenei: hatta kasani ke hami-e nezam nistand be khater-e keshvar ray bedahand’, BBC Persian. 12-06-2013

²²⁴ ‘Iran – Salehi: United with regime opponents in the field of the nuclear programme’. Deutsche Welle. 2-05-2012.

than recognising mismanagement by the regime more broadly, the nuclear programme is seen as a national endeavour, transcending administrations. This has extended to enrichment, which presidential candidate Mohsen Rezai proposed could be a joint project on Iranian soil with the United States, the European Union, Russia, and Iran. Hence, Rezai, one of few establishment figures to challenge Iran's nuclear policy, did not fundamentally challenge the rationale of having an enrichment programme, despite proposing a different and more economically viable approach.²²⁵

Tehran's criticism of the sanctions regime includes the fact that they do not stem from the nuclear programme. Instead, many sanctions were in place before the nuclear crisis. In Khamenei's words, 'They pretend that if the Iranian nation gives up on nuclear energy, they will lift the sanctions; they lie!'²²⁶ The Ayatollah has further noted:

Based on their grief and grudge, they decide to implement illogical sanctions, that [are] unreasonable and, in fact, barbaric. In reality, they are a war against a nation. Nevertheless, in this war, with the help of God, they will be defeated by the Iranian nation. [...] They can cause problems. Yes. Some incompetence will increase these problems. [...] But these are nothing the Islamic Republic won't be able to solve. [...] Greater problems, difficulties, have been solved by the Iranian nation and the country's officials; these are nothing!²²⁷

These statements target a domestic audience that sees value in establishing a relationship with the United States and that criticises the country's isolation from the international community and the west. It is further designed to appease the hardliners, including the IRGC and Basij, who view cordial relations with the west as undermining their interests. Indeed, this faction benefits from the status quo, including the prolongation of the sanctions regime. The IRGC, for instance, has long benefited from the isolation of Iran and the sanctions regime, solidifying its grip on Iranian politics and the economy.²²⁸

The Islamic legal discourse is not aimed at the general Iranian public, but rather to a small portion of the population, which has already pledged allegiance to the regime. This faction is composed of regime supporters, including but not limited to the IRGC and Basij. The target audiences of this discourse are the previous audiences identified in this chapter, namely, the west, NAM, and the Muslim world. As discussed previously,

²²⁵ 'Ghani-sazi-e moshtarak dar khak-e Iran ba hozoor-e Amrica, Oroopa, va Roosiye', *Donya-ye Eghtesad*. 12-5-2009. Last accessed 22-5-2015

²²⁶ These words are followed by the slogan 'nuclear energy is our obvious right' chanted by the crowd. *Ibid.*

²²⁷ *Ibid.*

²²⁸ Newbold, Gregory; Pickering, Thomas; Reinsch, William; Perkovich, George, 'Weighing Benefits and Costs of International Sanctions on Iran'. Washington, D.C., 6-12-2012.

the Iranian leadership has learnt that it cannot solely rely on religious discourse, if it wants to have the country's support on security issues. This is especially the case in such a controversial and costly endeavour as the nuclear programme. Hence, it has effectively developed a nationalist discourse, fashioned around the idea of scientific and technological progress as a matter of national pride.

This nationalist discourse is increasingly relied upon and targets two other audiences besides the domestic constituency. First, it serves to appeal to the NAM. Indeed, these countries are most likely to sympathise with Iran's criticism of the bias of international law and institutions, and the west's policies toward Iran. Hence, Tehran's claims that the west is undermining the nation's sovereignty and will are aimed at the NAM. Second, Iran is trying to reflect an image of a united front, by stating that there is a national consensus around the nuclear programme. This serves to strengthen Iran during negotiations, by allowing the government to draw a 'redline' on enrichment,²²⁹ claiming it to be a matter of national pride and therefore non-negotiable.

Critics of the Islamic Republic have inaccurately depicted the nuclear programme and narrative as one aiming to valorise 'the nation, the faith, and the regime'. They claim that an Iranian bomb would be "a Persian" bomb, a "Shiite" bomb, and a "revolutionary" bomb.²³⁰ Careful scrutiny of the Iranian nuclear narrative, however, suggests that this reading of the regime and its narrative is an oversimplification, showing a lack of deep understanding of the country, its identity and culture, and politics. As discussed in the previous chapter, Islamabad developed a nuclear arsenal using the 'Islamic bomb' narrative. Ultimately, however, what the country developed was a Pakistani bomb, not an Islamic or Sunni bomb. Likewise, and despite their differences, if Iran acquires a nuclear weapon, it will simply be an 'Iranian bomb', not a Shiite bomb or an Islamic bomb. The previous sections demonstrated that Tehran's religious discourse does not valorise nuclear weapons, but insists on the opposite. In that sense, while the infamous *fatwā* may not have a strong religious impact, it does have political implications. Overturning over a decade of insistence upon the prohibition of such weapons and their unethical nature and glorifying them as a 'Shiite' bomb would not help the Islamic Republic gain prestige, but rather undermine such an effort.

²²⁹ Rouhani, Hassan, address at Majles, 10-09-2013.

²³⁰ Tertrais, Bruno (2007), 52

Conclusion

The first part of this chapter assessed the political and legal framework of the Islamic Republic. It outlined the different tools provided by its Constitution to the supreme leader and the rest of the regime to guarantee its longevity. These include instruments allowing the supreme leader to overcome the restrictions set by the *shari'a*. The idea that regime interests must trump everything and the resources given to the supreme leader by his very status fall under this category. The second part of the chapter explored the Islamic Republic's nuclear narrative, particularly the Islamic legal discourse underlining and justifying the peaceful nature of its nuclear programme. It then identified the different audiences Tehran has tried to convince thanks to its nuclear narrative based around *shari'a* as a limiting factor. It argued that this religious legal justification of the nuclear programme has not been predominantly constructed for domestic consumption, even though it also targets a faction of the domestic audience, especially the IRGC and Basij. This specific discourse, instead, is aimed at Muslim states, the NAM, and western public opinion. Indeed, a great number of Iranians are too disillusioned with the faith, too critical of the religious state, and too busy trying to maintain its living standards to respond positively to the Islamic legal nuclear narrative.

The Muslim world has been more difficult to persuade for various reasons enumerated previously. The Iranian leadership has tried to convince western governments that Islamic law's stance on nuclear weapons was that of its supreme leader, thus providing evidence of the peaceful nature of the country's nuclear programme. However, the west's acknowledgement of the supreme leader's claims and the *fatwā* is merely political and in an attempt to further the diplomatic process. The main western audience targeted by the Islamic Republic lies in public opinion, which Iranian officials try to separate from their governments. In an effort to do this, Tehran has asserted time and time again that its criticism concerns the governments and not peoples of these countries.

Tehran has pursued its nuclear programme, in spite of backbreaking sanctions and political pressure. Its enrichment programme grew substantially between the imposition of the first UNSCR, calling on it to stop enrichment, and the conclusion of the interim deal in November 2013 with the EU3+3, when Tehran suspended enrichment. In fact, Iran's attempts to reach out to several different audiences, as surveyed in this chapter,

illustrate how crucial the nuclear dilemma has become to the Iranian regime. The ability to tell these audiences, both domestic and foreign, that the country has overcome the obstacles set by the powers, as well as the conspiracies designed to stop its progress, has become a key endeavour for Tehran. Hence, while Iran has limited its programme a number of times to seek sanctions relief (as in the case of the interim deal), the dismantlement of key parts of the programme, especially enrichment, has consistently remained out of the question. The emphasis on domestic enrichment has become the symbol of Iran's persistence and described as the 'redline' during the Geneva talks.²³¹ Domestic enrichment is described as the key achievement of the Iranian nation, both technically and politically. Hence, the Iranian leadership relies on the narrative that it has 'mastered' the fuel cycle to show that the costs of the nuclear programme have been worthwhile. It further shows that international pressure, including the UNSCR and sanctions, has not been successful and Iran has stood its ground in the face of the challenges. The nuclear programme is presented in almost exclusively nationalistic terms, in Iran, which terms emphasise both the nation's resistance to foreign forces trying to dictate terms to Iran and its indigenous scientific and technological progress.

Regardless of its criticism of international law and international institutions, and its creation of a parallel legal discourse to defy the international community, the Islamic Republic has, nonetheless, maintained that it has been in compliance with its international obligations. Iran maintains that its programme is within the non-proliferation regime's framework and in accordance with international norms and safeguards. The EU3+3, however, cites the example of the disclosure of the sites of Natanz and Arak, as well as Iran's undeclared activities, including fissile materials and dual-use objects. It further highlights Iran's breaches of Article 2 of the NPT and its failure to comply with UNSCR 1696. Iran, on the other hand, denounces the UNSC as biased toward the west and the UNSCR as illegal. It accuses the Board of Governors of acting outside its mandate.

The Iranian leadership has attempted to use Islam as an indicator of its morality in order to build trust. In other words: the *fatwā* and the overall 'prohibition' of nuclear weapons under Islamic law are used to promote the idea that the Islamic Republic is indeed bound by its religious, and thus, moral obligations. As noted by Kadivar: *shari'a* stems

²³¹ Rouhani, Hassan, address at Majles, 10-09-2013.

from morality and morality stems from *shari'a* in this belief.²³² This morality is presented as transcending mere international legal norms, which are to be contrasted from moral obligations based on faith. Indeed, the Islamic Republic, only sees morality in religion and, based on its narrow understanding of the notion, it views modern international legal instruments as secular and consequently, deprived of all morality, in the image of the west, which shaped it to reflect its own immorality.²³³ Hence, the Islamic Republic uses morality, which it sees as superior to secular law and equating *shari'a*, in order to show that its stance is indeed to be trusted. However, as this chapter has demonstrated, Tehran's views on the prohibition of nuclear weapons in Islam stem from political pragmatism.

²³² INT003SNT

²³³ Immorality and amorality are essentially viewed as undistinguishable in the Islamic revolutionary ideology. It is further held as truth that secularism promotes immorality, since morality can only be achieved through religion.

Chapter Seven: Conclusion

The argument

The aim of this thesis is to contribute to understanding of the role and implications of the justification of nuclear ambitions in Islamic terms. The key question at the heart of this discussion is: what are the strategic implications of the Islamic legal discourses on nuclear weapons? Throughout this thesis it has been argued that there is no single stance on the matter in the Sunni world. However, given the political nature of the topic in Iran, some Iranian Shiite scholars have been approached to discuss it. Among these scholars, there seems to be a consensus that nuclear weapons are prohibited by the faith. Still, this prohibition remains unclear in many aspects, including its scope. Indeed, it remains unclear whether this prohibition is limited to the use or also to development of nuclear weapons. Generally, however, the notion of distinction is the key driver behind rulings according to which Islam prohibits nuclear weapons. The principle of distinction is clear-cut under international humanitarian law, but it is rather intangible under *shari'a*. Nevertheless, the central argument according to which Islam prohibits nuclear weapons lies in their indiscriminate nature.

Nevertheless, this thesis argues that whether one considers nuclear weapons to be legal, or prohibited, is not significant. What is crucially important is the use of the Islamic legal discourse as an enabling or limiting factor in political terms. To be sure, the faith does not generally have an impact on policymaking per se, but the way it is used to fashion narrative and justify and legitimise policy certainly does. Yet, the impact of the faith on decision-making can also not be discounted, as the late Ayatollah Khomeini is said to have refrained from allowing the use of chemical weapons to counter Iraq's chemical use, at the height of the Iran-Iraq War. More generally, the potential of divine law to be moulded into any narrative and to justify any position regarding general security issues -- and nuclear arms control, proliferation and disarmament, in particular -- is key to the understanding of the nuclear narratives and policies of Muslim state and non-state actors with a nuclear capability, programme, or aspiration. In other words, interests fashion discourse and discourse galvanises support. The justification of policies in Islamic terms is crucial because the faith plays a key role in shaping the worldview of individuals and nations. As such, the stance that an actor using Islam to fashion a nuclear discourse takes -- defining its nuclear programme or ambitions in

Islamic terms -- can only be reversed at great domestic and/or international political cost.

Comparing the three discourses

There are three key differences between the nuclear narratives of the cases examined in the thesis. These were identified and assessed in the context of national interests, regional stability, and international peace and security.

First, the Pakistani attempt to acquire nuclear weapons was mainly justified and funded by emphasising the security and prestige of the Muslim world and its need for an 'Islamic bomb', which would put it on a par with the 'Christian, Jewish and Hindu civilizations'.²³⁴ Islamabad's discourse did not have an explicit legal or ethical component. Instead, by virtue of acquiring nuclear weapons, Pakistan implicitly espouses the view that these weapons are not fundamentally against the faith and prohibited by it. Likewise, Al-Qaeda, aiming to secure political and financial support, has presented a religious basis, albeit flawed and void of any authority, for its nuclear ambitions. The terror network has explicitly declared that the faith encourages Muslims to equip themselves with nuclear weapons, and to use them if/when needed. By contrast, Iranian rhetoric, also centred on a legal justification, categorically rejects the morality and legality of nuclear weapons and embraces the idea of a fundamental prohibition of nuclear weapons under Islamic law. On the one hand, then, Pakistan presented its nuclear weapons programme as an indispensable source of pride for all Muslims and as a guarantor of the *ummah*'s security, and Al-Qaeda has called the acquisition of nuclear weapons a religious duty. On the other hand, the Iranian leadership has emphasised the peaceful aspect of its programme and the fact that it aims to provide the country with nuclear energy, also depicting it as a source of pride for all Muslims. In summary, the utilisation of the faith by Islamabad and Al-Qaeda is enabling, while Tehran's has been limiting.

The second difference resides in the goals pursued by each state. The Al-Qaeda and Pakistani narratives aimed to secure political support and funding from potential Muslim donors for their programmes, while Iran has stressed self-sufficiency and pursued its programme despite sanctions and with no external funding. As such, the

²³⁴ Armstrong, David (2007), 32

purpose of the rhetoric destined to a Muslim constituency is solely to gain support across the Muslim world in order to create a counter-movement to the west's opposition to the programme. By doing so, at the peak of its unpopularity, the Islamic Republic tried to show its domestic and international audiences that it had friends and allies globally.

The final difference between the discourses is that of their effectiveness. Pakistani rhetoric has been widely successful, as it reached its goal of securing funding for the programme from Muslim States. Iran, however, has fallen short of achieving its goal, and its rhetoric has even been counterproductive. Several factors are at the core of these dissimilar results, the nuances of which many analysts in the west have not captured. Contrary to Weissman and Krosney's claims,²³⁵ the Muslim world is very far from being a single entity. The factors contributing to the dissimilar results obtained by Iran and Pakistan were outlined in the previous chapters as historical, strategic, and economic ones. Pakistan justified its nuclear weapons programme as a response to the vital threat presented by India. Al-Qaeda's discourse has been effective to the extent that there has not been any categorical and complete rejection of its ambitions and their foundation across the Muslim world. However, the network has failed to receive the unified support of the *ummah*.

Reflection: Why does it matter?

The use of the Islamic legal discourse to shape nuclear narrative has three key concrete strategic implications. While these are discussed in this thesis in the context of nuclearisation, they can also be applied to broader WMD and security issues.

First, Islam plays a key role in shaping identity and galvanising support, both political and financial. Therefore, as demonstrated throughout the thesis, the justification of a given programme or ambition in Islamic terms can be a 'game changer'. Islam 'has proven to be a major force in the public life of Muslim societies, confounding the presuppositions of a development theory predicted on the progressive Westernization and secularization of society' since the 1970s.²³⁶ This growing reliance on Islam as an instrument shaping identity and policy is part of a greater global trend, specifically the

²³⁵ Weissman, Steve. Krosney, Herbert (1981), 23

²³⁶ Esposito, John (1997), 2

return of religion into the political life of nations. While in the mid-twentieth century most developments seemed to indicate that religion was rapidly becoming ‘a thing of the past’, since the 1970s, domestic and international events seem to prove the opposite.²³⁷ Understanding that political Islam can be ‘a formidable force even though Islamic movements or organizations often constitute a minority of the community’, the governments of Muslim countries often utilise the Islamic discourse to rally fellow Muslims around their cause. Hence, the use of Islamic terms in security and nuclear narratives to legitimise policies is a defining factor for states. This is even the case if the faith and the narrative shaped by it does not ultimately directly translate into concrete policy. The faith ‘has increasingly reemerged in Muslim political discourse and politics and has been effective in providing or reinforcing national identity and political legitimacy.’²³⁸ To be sure, ‘Islamist movements and organizations have proliferated across the Muslim world.’²³⁹ In fact, out of the three key events identified by David Hawkin as illustrating the significance of religion ‘not just in the lives of individuals, but also in the lives of nations’, two are linked to Islam.²⁴⁰ These two were assessed comprehensively in the context of this thesis and their role in shaping nuclear policy. They are the 1979 revolution in Iran and the 9/11 attacks perpetrated by Al-Qaeda against the United States.²⁴¹ However, another event can be added to this list, that of the conflict between the United States and the Soviet bloc in Afghanistan. The U.S. role in supporting the creation of the movement that led to the birth of Al-Qaeda has been widely discussed as one of the greatest failures of U.S. foreign policy in recent decades. However, Al-Qaeda is only the tip of the iceberg in U.S. efforts to support, train, and arm radical Muslim groups to counter what it then perceived as the greatest threat to its national interests: communism. Indeed, ‘Pakistan’s status as a “front-line” state in the battle against the Soviet presence in Afghanistan [...] was too central to permit too close a scrutiny of the corrosive longer-term implications of this process of Islamization of Pakistan.’ Yet, ‘as the war wound down and the interest of America waned following the retreat of the Soviets from Afghanistan, Pakistan was left with *jihadism* and *jihadis* threatening to rent asunder the society and politics of Pakistan.’²⁴²

²³⁷ Hawkin, David (2004), 3

²³⁸ Esposito, John (1997), 68/70

²³⁹ *Ibid.*

²⁴⁰ Hawkin, David (2004), 3

²⁴¹ *Ibid.*, 3-4

²⁴² Rangachari, T.C.A. in Kalia, Ravi (2001), 117-118

Understanding the potential of Islam as a galvanising factor, Al-Qaeda, Pakistan, and Iran have tried to appeal to various audiences by putting forward the idea of a nuclear ambition -- nuclear weapons, and nuclear energy, respectively -- as a rallying point for the *ummah*. Yet, they have received different responses to their claims, which stem from broader historical, cultural, religious, political, and strategic dynamics. The two previous chapters showed that the nature of religious and national identities is extremely different in Iran and Pakistan. They demonstrated that national identity in Iran is shaped around the ‘Persianate’ idea, which has been holding Iran together, preserving its political, cultural, and territorial integrity and sovereignty. In Iran, as in other ‘older national states, language, history, religion, geography, and culture are basic to national identity, but in Pakistan, they all worked to divide the nation.’²⁴³ Hence, the country’s ‘brief history [...] calls upon a large store of dreams having to do with the idea of Pakistan as a Muslim – or Islamic – state.’²⁴⁴ This is also the case of the dynamics between the two. Indeed, Pakistani national identity is inherently linked to the Muslim faith and the creation of the state of Pakistan was a means to preserve Islam and protect Muslims in the subcontinent. This is very different from Iran where historically the opposite has occurred, with religion being used as a means to preserve the Iranian state and its people’s cultural and political independence and ‘exceptionalism’ from the invading powers of the day. This thesis argues that this is precisely the reason why attempts to sell foreign policy and a nuclear programme in pan-Islamic terms was much more effective in Pakistan than in Iran. Moreover, it is this relationship of these respective peoples with nationalism and religion that has shaped their attitude toward Islamic discourses in foreign and nuclear policy, defining how these discourses are used in each domestic context. Al-Qaeda’s use of the Islamic discourse to justify inflicting mass-casualties has neither been categorically embraced, nor categorically rejected by the *ummah*. Instead, it continues to divide the Muslim world. Indeed, as noted in Chapters Three and Four, Al-Qaeda’s leadership does not have the religious authority to issue religious decrees condoning or prohibiting means and methods of warfare or calling Muslims to unify under the banner of Islam and fight the ‘House of War’. However, the general exasperation of Muslims with their governments, their inability to effectively solve national and regional security challenges, and western interference in

²⁴³ Embree, Ainslie, in Kalia, Ravi (2011), 217

²⁴⁴ *Ibid.*

their countries and regions, has led many to endorse, if not embrace, Al-Qaeda's vision and tactics.

Second, beyond its ability to shape politics and the collective consciousness, Islam is, first and foremost, an individual matter. It shapes the individual's beliefs, moral and political stance, and worldview. Decision-makers, scientists, and engineers are also individuals with religious and political convictions. These fashion their views on security and proliferation. Few individuals have transformed the landscape of contemporary international security and non-proliferation to the same extent as A.Q. Khan. Khan, as key Pakistani political and military decision-makers, was driven by his faith. Likewise, members of Al-Qaeda and the Iranian revolutionary establishment are also driven by their faith and the worldview generated by it and their decisions to proliferate or refrain from it are also fashioned by it. These figures were inspired by the Muslim faith and their worldview shaped by the dynamics between the Muslim community and the rest of the world, especially the great powers. Evidence suggesting that A.Q. Khan had visited Taliban-controlled Afghanistan several times and met with bin Laden and his lieutenants²⁴⁵ certainly ties into the Islamic nuclear discourse. Indeed, A.Q. Khan's religious convictions played a key role in convincing him to return to Pakistan and assist the country to 'upgrade' to a nuclear weapon state status.

Lastly, the attitude of individuals, governments, and regimes toward the international system is also shaped by their views of Islam and the place of the Muslim world within it. Therefore, both Iran and Pakistan share a common view of the international order. They both frame this worldview in pan-Islamic terms and emphasise that the 'House of Islam' is under attack by the west. This view is based on mistrust and, in some cases, contempt for international law and institutions. This view is also shared by Al-Qaeda, but with the caveat that unlike state actors, the network fundamentally rejects any international order outside its narrow definition of an Islamic one. In the case of Iran, this mistrust stems from the country's experience with the UNSC during the Iran-Iraq War and the institution's failure to condemn the war of aggression and use of chemical weapons by Baghdad. In this sense, the international community, with the United Nations and international law as its flagship, is not viewed as a means for states to cooperate and promote international peace and security, but rather as an obstacle to overcome. The narrative according to which the country is unfairly targeted to promote

²⁴⁵ Venter, Al (2007), 5

western and Israeli interests and to punish the country for its opposition to imperialism and its defence of victimised peoples has led the leaders of the Islamic Republic to believe that this is the case. Mahmoud Sariolghalam describes this ‘negative attitude toward the international order as a result of our [Iran’s] weakness’. He points out that had Iran been able to establish a system capable of competing abroad and substantiating at home (as Brazil, South Korea, and other countries do), it would not feel weak and compelled to oppose the west.²⁴⁶ Yet, ‘to reject the system of treaty-based international law rather than build on its many strengths is not only unwise, it is extremely dangerous.’ These words are a criticism of the United States’ ‘disregard of its international legal obligations,’ which the authors describe as ‘abandon[ing] the best that its history has to offer to the world’.²⁴⁷ This idea also describes the consequence of Iran and Pakistan’s referral to their particular religious and cultural beliefs at the expense of universal norms.

As discussed in Chapter Two, international law completes several tasks, which help govern international affairs. First, they ‘embody a set of universally applicable expectations, including prohibited and required practices and policies,’ thus ‘articulat[ing] important global norms’. Second, ‘treaties and regimes they establish are a “framework for collective action to meet common challenges.” They provide a measure of predictability and accountability and promote learning.’ Furthermore, they ‘contribute to the development of international consensus’ in addition they ‘provide important reference points and criteria to guide States’ activities and domestic legislation and provide a focal point for discussion and negotiations on the subject matter of the convention.’ Most important, ‘treaties also provide a foundation for further progress. States are able to accumulate expertise and confidence by participating in the structured system for pursuing a particular policy of mutual or collective benefit.’ Thanks to this acquired ‘experience and confidence,’ states can ‘shape further development and implementation of the policy.’²⁴⁸

The interpretation, explanation, and justification of modern legal issues, especially in the context of challenges to international peace and security – such as nuclear arms control – in the context of *shari’a* is problematic. As argued in Chapter Three, the

²⁴⁶ ‘Interview with Mahmoud Sariolghalam: Opposition to the West Does Not Have Roots in Thought’, *Aftab-e Yazd*. 30-12-2013. Last accessed 30-12-2013. P. 8

²⁴⁷ Deller, Nicole. Makhijani, Arjun. Burroughs, John (2003), 140

²⁴⁸ *Ibid.*, 130

Islamic legal framework will inevitably fall short of offering adequate and satisfactory solutions to these challenges, as it does not provide for nuanced thinking on security issues. Indeed, as a legal system, *shari'a* has major areas of incompatibility with the universal system, giving birth to the international norms regulating the conduct of warfare and arms control, non-proliferation, and disarmament. The shortcomings of the Islamic system, in addition to its being an out-dated and complicated legal framework, include such issues as the lack of distinction between private and public law and its being opinion-based. Hence, while international norms are developed by experts who have studied the subject matter, Islamic law-making is conducted by clerics with opinions on all matters and no real expertise on them. This in turn makes it extremely difficult to implement their opinions, and thus laws, in public affairs, especially in the case regarding foreign policy. As noted earlier, Mostashar Al-Doleh identifies a difference between modern legal systems, of which the international legal framework is a result, and the Islamic legal system.

[One such difference,] which is great and important, is the fact that the Code only encompasses worldly interests, in a manner that anyone, regardless of their religion, will agree to it, and religious matters have a separate special book. However, in the Muslims' book of *shari'a*, worldly matters have been combined and confused with those of the other world. Consequently, this is damaging to public politics.²⁴⁹

While Mostashar Al-Doleh merely attempted to highlight the differences between Islamic law, as applicable in Muslim countries, and specific domestic legal systems, this point is of significant value in the consideration of the role of the Islamic legal debate in the context of nuclear policy. Indeed, nuclear rhetoric, based on Islamic law, is engrained in the particular context of Islamic law, which is not comprehensible for the majority of the international community. Therefore, a *fatwā* issued by a country's leader is not relevant to the non-Muslim members of the international community, cannot be implemented or verified by its watchdogs, which operate in the context of a single universal legal framework. Therefore, no *fatwā* can replace the implementation of universally established norms and agreements. Mostashar al-Doleh adds another distinction between the two legal systems, noting that the Code contains customary and ordinary laws, while in the Muslim legal system, the problems concerning customs are in people's minds (not fixed). As such, 'in the name of customs, justice is done to people'.²⁵⁰ Hence, the Islamic legal system, while being very rigid, can also be flexible,

²⁴⁹ Mostashar al-Doleh (1984), 26

²⁵⁰ *Ibid.*

in fact, too flexible. Indeed, a *fatwā* can be issued ‘in the name of customs’ but it can also be revoked ‘in the name of customs’ or alternatively, the interests of the Muslim community. Nevertheless, the political impact of such a reversal would make it counterproductive.

To conclude, Islamic law views nuclear weapons through the same lens as international law, formulated in the latter as the ‘cardinal norms’ of international humanitarian law. However, the *shari’a*’s main shortcoming lies in its lack of effective and concrete solutions to real security challenges, and its cultural specificity. Hence, while the law is implementable on a global-level, various Muslim actors have effectively used it to promote their interests. Hence, while, ultimately, Islamic law does not always dictate policymaking, the Islamic narrative has been very effective in providing its users with financial and political support, as well as recruitment. Nevertheless, this success has, in turn, also been subject to power dynamics, national interests, and other considerations stemming from *realpolitik*.

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